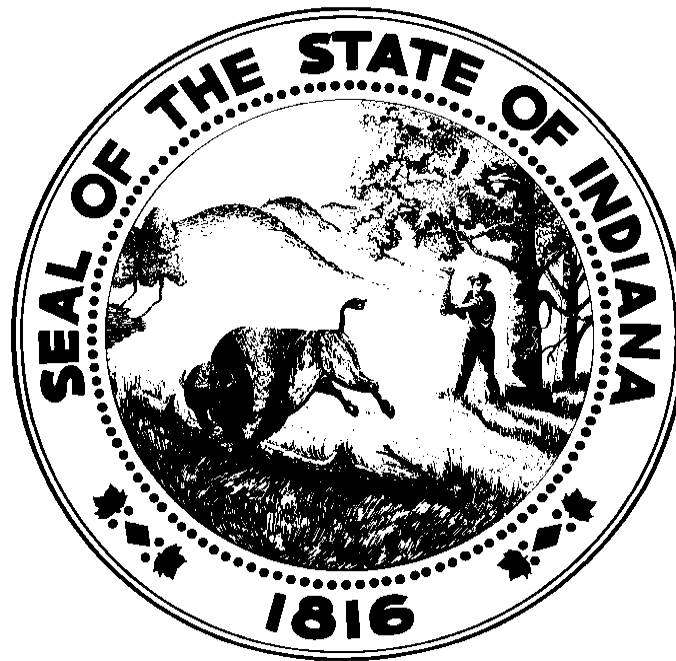


***Professional Services
Contract Manual***

October 2003



***Contract Management Division of
The Indiana Department of Administration***

Charles R. Martindale
Commissioner

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Introduction

The Indiana Department of Administration is pleased to present its Professional Services Contract Manual.

The Manual is intended to assist State agencies in the preparation of professional services contracts and to provide information on how the contract should be submitted through the approval process.

Please review the Manual carefully. It will guide you in the preparation of professional services and leasing contracts. If the Manual does not answer all of your questions, please feel free to contact a member of the Contract Management Section.

Contract Management Section:

Dan Gettelfinger	(317) 234-1596	dgettelfinger@idoa.state.in.us
Shari Long	(317) 232-7636	slong@idoa.state.in.us
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Fax Number	(317) 233-5022	

If you have suggestions for improving the Manual or the contract review process, please let us know!

F. Daniel Gettelfinger,
Deputy Commissioner
Department of Administration

Frequently Asked Questions

The following are questions frequently asked in the Contract Management Section:

1. Can I renew a contract after the expiration date?

An expired contract cannot be renewed. If you want to renew a contract, you must have at least one signature on the renewal prior to the expiration date of the original contract. If the renewal requires the agreement of the vendor, it is the vendor's signature, which *must* appear prior to the original termination date.

2. Do I need a Non-Collusion Statement in an Amendment or a Renewal?

Yes, always. This clause must be included in all amendments and/or renewals. The ability to collude becomes greater once a relationship has been established with a Contractor.

3. How can I find out where my contract is in the system?

If you have Intranet access, you can use the contract search function on the Department of Administration's home page. If you do not have the Intranet access, you may email Sandra Redding of the Contract Management section for assistance or you may check our web site at

<http://intranet.doit.state.in.us/IDOA/CSS/Base/fwelcome.html> to check. (See page 8)

4. How many days will it take to process my contract?

Generally IDOA has a goal of reviewing contracts within ten (10) business days of receipt. However, with E-Procurement and the new M/WBE rules you may experience some delays. The Budget Agency turn around time is within eight (8) business days of receipt. The Attorney General's Office, by statute, has forty-five (45) days to review and approve contracts; however, this is usually accomplished in a shorter period of time. (See page 7)

5. My contract has been pre-approved by the Attorney General's Office but denied by IDOA. How can that happen?

The Attorney General's office approves contracts for form and legality while the IDOA review focuses on policy, contract language and procedures and general business issues. Just because the form is correct, does not mean that the business deal you have negotiated is in the State's best interest. Also, the new M/WBE goals may not have been met.

6. Do I need to seek competition?

Definitely. There is an affirmative obligation to submit to a formal competitive process on all contracts estimated to exceed \$75,000 annually. If you will not be utilizing a competitive process you must seek and obtain an exception from the Deputy Commissioner of IDOA. **Requests for sole source approval with a listing of minority/women's opportunities must be received 30 days in advance for approval.** Even where no formal competition is required, you must obtain as much competition as is practicable in the circumstances. (Please note that you must also submit a M/WBE plan or waiver forms with the contract and must use race-neutral means to meet the new M/WBE goals in contracts under \$ 75,000)

7. When do I need to use the RFP process?

You must use a formal RFP process any time the estimated value of your contract equals or exceeds \$75,000 annually. For contracts under \$75,000, it is highly recommended that a solicitation process take place. This can include obtaining quotes, requesting proposals, or calling for a comparative analysis. Telephone solicitation is allowed, but obtaining information in writing is preferable. A clear audit trail is a must.

8. What is the difference between an amendment and an addendum?

An amendment serves to change the terms or conditions of an existing contract. The addendum is designed to be attached to a Contractor's contract form for purposes of deleting terms to which the State cannot agree and adding the mandatory clauses in any State contract.

9. Does ITOC need to approve my contract?

Any contract dealing with information services related to equipment/services should be reviewed by ITOC. Delegation information can be obtained by visiting the ITOC Intranet website at http://www.in.gov/itoc/html_site/architecture/dele.html. If you have specific questions ITOC can be contacted at (317) 232-0180.

10. Do I need an EDS with every contract I submit?

Yes. A contract cannot be routed through the signature process without a fully completed EDS.

11. Can I have a contract for more than four years?

It is the policy of IDOA that the total life of a contract shall not exceed four years. If, however, you have a compelling business reason to exceed the four-year limit you may do so, but you must first obtain written approval from the IDOA contract section. This approval should be sought well in advance of the expiration of an existing contract.

12. What do I do when I need to rush through a contract?

- a) Contact your IDOA contract reviewer by e-mail and explain why the rush is needed and when you will be delivering the contract.
- b) Contact Budget after you have received approval from IDOA requesting a rush review.
- c) E-mail the Attorney General's Office at contracts@atg.state.in.us or your designated contact. You will need to give them the EDS number, name of Contractor, and reason for requesting the rush.
- d) Do not just show up with a rush and expect to wait while someone reviews it. If you give us advance notice and a reasonable explanation, we are accommodating most of the time.

13. Can I amend and renew the contract at the same time?

Yes. The document would be titled as an amendment. However, the body would indicate two activities, the renewal and the amendment change. (Please note that you must also submit a M/WBE plan or waiver form with the amendment renewal)).

14. When does a Contractor need to be registered with the Secretary of State?

Pursuant to IC 5-22-16-4, any out of state corporation wishing to do business with the State of Indiana must be registered with the Secretary of State. (See IC 23-17-26 and IC23-1-49-1). Registration can be confirmed on the Secretary of State's web site: http://www.ai.org/sos/bus_service/online_corps/default.asp.

15. How long is a form approval from the Attorney General valid?

While there is no set policy, it is recommended that you seek review of form contracts every year. This review would allow for your form contract to be updated for any new language.

16. What information may be changed on form-approved contracts without resubmitting the contract to the Attorney General for form approval?

The only items that can be changed on a form-approved contract are the contractor name, the dollar amount, and the term. No other information can be changed on form approved contracts without resubmitting the contract to the Attorney General for form approval.

Helpful Reminders

The following reminders are offered to help avoid having contracts returned unsigned during the review process. This is not an exhaustive listing but rather a listing of those items that occur frequently.

Allow 30 days for approval of Sole Source Requests. You must attach a listing of Minority sub-contracting opportunities to the request for approval by the Minority Business Division.

If the Contractor/Grantee is not an individual, be sure to include the business entity designation ("Inc.", "Corp.", "LLC", "LP", etc.) both in the first paragraph of the contract and on the EDS sheet.

All things being equal, Indiana firms/universities/individuals should be sought to fill the contractual needs of state agencies. If you contract with other than an Indiana entity, you will need to explain how you determined that there was no Indiana entity that could fill your needs.

Non-Collusion is the final clause before the signature page for all agreements including renewals and amendments.

The signature page of an agreement should be placed after the contract language and before attachments/exhibits. The signature page must be flagged for easy identification.

Please remember that you must submit a M/WBE plan or waiver form with your contract

The Drug-Free Workplace, Conflict of Interest, and Non-Discrimination clauses should be used as written, without alteration unless an exception is approved by IDOA.

Do not attach separate Drug Free Workplace Certification sheets.

Attachments/exhibits attached to a contract must be referenced in the body of the contract and must be labeled. No extraneous items should be attached to a contract.

If you are citing an Executive Order, or a somewhat more obscure legal authority that is not Indiana Code or Administrative Code, please consider attaching it to your contract. This will help ensure the speed and efficiency needed for approval.

Mutual Termination for Convenience Clauses are unacceptable and will result in a rejection of your contract or grant.

The use of Executive Letters to change a contract is unacceptable and not allowed by IDOA. All changes to a contract must be by mutual agreement and

by amendment and signed by all parties.

On the EDS include the information requested in Box #37 and #38. In summary: what are you contracting for, why are you spending the money, why did you choose this contractor, and how did you determine the price being charged to be reasonable? If you feel more information would be useful to the reviewers that is acceptable. However, you must first offer the information requested.

On the EDS make sure the amount in Box #6 reflects the dollar expenditure being requested for the document attached. If the State will receive money as a result of the agreement, a zero (0) is appropriate here.

On the EDS, Box #7 is a cumulative total of the present expenditure requested plus all previous amounts, including all amendments and renewals (i.e. a running total for the life of the agreement).

When changes/corrections are made in an agreement after signatures have been affixed, the changes must be initialed and dated by both the Contractor and the agency.

Include all optional clauses that you believe will best protect your agency. Do not include clauses which are not appropriate/useful (i.e. using a Key Person clause if there is no key person to the agreement, using order of precedence when there are no other documents to the agreement, etc.).

If using clauses that require the insertion of information to make them complete (RFP #____, payment shall be sent to _____) insert the needed information or remove the clause.

When processing an Amendment to change the name of a Contractor you must include language in the amendment reflecting the change and attach corporate documentation substantiating the business reason for the change.

Expired contracts cannot be renewed or amended.

When contracting with an individual, a written analysis of the service in relation to the IRS guidelines placed behind the EDS will help move the contract along.

When a document has a space for information – fill in the information or remove the space. DO NOT LEAVE BLANK SPACES IN A CONTRACT.

Make sure all dates are consistent in a document. Fiscal year does not automatically set contract dates.

Remove instructional language when using Boilerplate clauses.

Only use one renewal clause. Two clauses are included in the manual for your consideration, choose the one appropriate for your agreement.

Guidelines for Ethical Contracting Practices

Elected and appointed state officials and State employees are entrusted with the safety and welfare of taxpayers. Citizens are entitled to have complete confidence in the integrity of their government and expect State employees' private interests will not conflict with public business. To maintain the integrity and credibility of contracting, a clear set of guidelines, rules and responsibilities to govern the behavior of State employees is required.

General standards of ethical conduct for State employees are enumerated in IC 4-2-6-5, 6, 7, 9, 11 and 13, and in 40 IAC 2-1-6 through 2-1-9. A State employee who violates either these statute sections or rules may be subject to State Ethics Commission sanctions and/or agency disciplinary action. Pursuant to 40 IAC 2-2-1, State employees have the right to have any ethics question reviewed and decided by the State Ethics Commission. If you have a question about a specific action, please contact the State Ethics Commission directly.

For complete information regarding ethical practices in contracting, refer to a booklet published by the State Ethics Commission. The booklet is given to each State employee upon hire and is titled:

“Indiana State Ethics Laws: A Guide for State Officers and Employees in the Executive and Administrative Branch of State Government”

If you need further guidance in this area, call the Ethics Commission at 232-3850.

Contract Approval Process

Sufficient lead-time should be given when preparing a contract so it can be reviewed and executed by all appropriate parties.

The passage of IC 4-13-2-14.1 allows state agencies to expedite the contract approval process by reducing the number of signatures required to fully execute a contract. Beginning July 1, 2001 the agency head was no longer required to sign state contracts.

The State Budget Director is no longer required to approve Public Works contracts with an estimated cost of less than \$100,000.00

The Governor's signature is no longer required on contracts for the sale, purchase or lease of real property or for public works projects.

Hopefully, these changes will expedite the contract approval process for your agency. Please note this statutory change is permissive. However, agency heads or their designees are still recommended to sign contracts.

In order for a contract to be returned to the originating agency prior its commencement, IDOA should receive all contracts at least 60 days prior to the

commencement date.

If a contract is being submitted 30 days after the start date designated in the agreement, you **MUST** include a letter explaining the submission delay.

By internal policy, IDOA pledges to review and act on each contract within ten (10) working days of receipt. However, with E-Procurement and the new M/WBE rules you may experience some delays. By internal policy, the State Budget Agency pledges to review and act on each contract within eight (8) working days. By statute, the Office of the Attorney General is allowed forty five (45) days to review the contract. However, they normally try to complete a review more quickly.

Certain contracts under \$2,500 do not need to be reviewed by the Attorney General's Office. See IC 4-13-2-14.3 and 10 IAC 2-3-1 for clarification.

Additionally, according to IC 4-13-2-14.3(e) the Attorney General's office may approve form contracts for agencies. (Form contracts are contracts that are used repeatedly for many different Contractors or Grantees where the only information that changes is the Contractor's identifying information and dollar amounts.) If the Attorney General's office grants this form approval, individual contracts created from these form contracts do not need the signature of the Attorney General's office. Any alterations to the form contract must be approved by the Attorney General's office. It is highly recommended that a form contract be submitted to IDOA for review before it goes to the Attorney General's office. Form contracts will continue to need the signature approval of the Department of Administration and the State Budget Agency.

Intranet Contract Tracking System

CONTRACT TRACKING SYSTEM

The Contract Tracking System has been designed to help agencies find their contracts as they make their way through the signature process. This system contains information from the Contract Management System (KMS) and is only available on the Intranet. Once the contract has been entered into KMS, you can immediately retrieve information regarding the status of that contract. Contracts can take up to sixty (60) days to work through the signature cycle.

To access the contract search site on the Intranet take the following steps:

From the Intranet site, choose the Indiana Department of Administration box on the right hand side of the screen.

Once you have connected to this site, click on "Contract Search" from the options on the left-hand side of the screen.

"Welcome" shows up, read and click on Continue afterward.

You have reached the search criteria, choose how you want to search i.e. EDS number, Contractor's name, etc.

Click Search and the search results will appear.
(To locate the routing information, click on the EDS number)

If you are unable to access the Intranet, please call Sandra Redding at (317) 232-3153 and/or e-mail contract@idoa.state.in.us.

Information Technology Oversight Commission (ITOC)

ITOC is responsible for coordinating information technology within the state insofar, as is possible without infringing upon the prerogatives of the separately elected state officials. Information technology includes the resources, technologies and services associated with the fields of information processing, office automation; and telecommunication facilities and networks.

Except for separately elected state officials, all requests and contracts for information technology consultants and contractors, for facilities management contractors, for computer equipment or software rental, lease, or acquisition, and all requests for the sharing of either data or systems with any other agency of state, local, or federal government or with any non-governmental entity must be submitted to the commission, or to the designee of the commission, for review and approval. Contracts by separately elected state officials must be submitted for review and comments.

A delegation policy letter and matrix are available on the ITOC Intranet website under the IT Architecture section http://www.in.gov/itoc/html_site/architecture/dele.html. You may contact the consultant assigned to your agency or contact ITOC at 232-0180 for assistance with any information technology questions.

Executive Document Summary (EDS)

The Executive Document Summary has been revised effective October 2003. The following information/instructions pertain to the new form. The new form is available on the intranet at the Forms Management site.

All contracts submitted to the Contract Management Section must have a fully completed Executive Document Summary (EDS), a copy of which follows. The EDS is not a legally binding document. However, it is used by the Information Technology Oversight Commission (when applicable), IDOA, the Budget Agency, the Attorney General's Office and some internal agency budget/fiscal sections to track necessary contract information and to assure appropriate policies are followed. Information from the EDS is entered into the contract tracking system that has been designed specifically for use by these agencies.

It is essential that the information on the EDS be accurate. This information will be used in the development of reports such as the annual Professional Services Report published each fall. Inaccurate information could reflect poorly on your agency as well as contribute to inaccurate reporting of contract information.

Accessing the Executive Document Summary

The EDS is available on both the Internet and the Intranet. On your Internet or Intranet Home Page, find the Commission on Public Records or State Forms. Two versions of the EDS are available.

One version is the PDF version. For this version, you must be able to download the Acrobat Reader (instructions included on-line).

Another version is available for those persons who can utilize Microsoft Word 97 software.

Instructions for the EDS Form

Instructions for completing the EDS are included on the back of the EDS form. The following is a more detailed description of the information that should be placed in the boxes on the EDS.

Item #1: EDS Number: Each EDS number must begin with the agency Automated Purchasing System (APS) number followed by the last digit of the fiscal year and ending with an agency assigned contract number. The APS number is the same number used by your agency and/or division on requisitions and purchase orders. The EDS number should look like this: APS# (for example C15) – the last digit from the fiscal year (for example 1) – the number assigned by our agency (for example 001) (C15-1-001).

The EDS# for amendments and renewals will be the same number used for the original document.

Item #2: Self-explanatory

Item #3: Place a mark next to the type of document being submitted for approval. Do not mark more than one type. If the document does not fit one of the given descriptions mark "Other" and specify the type of document. ONE TYPE MUST BE MARKED FOR EACH DOCUMENT BEING SUBMITTED.

Item #4 & 5: Self-explanatory

Item # 6: Enter the dollar amount to be expended as a result of this contract/amendment/renewal.

Item #7: Enter the total dollar value to be expended under this agreement. This would be the same amount as #6 if this were an original agreement. This would be the total of the original amount of the agreement plus/minus any renewals/amendments processed during the life of the agreement.

Item #8: This box is to be used for those contracts in which money will be received by the State rather than expended. Enter the dollar amount to be collected by the State because of this contract/amendment/renewal.

Item #9: Enter the total dollar value to be collected under this agreement. This would be the same amount as #8 if this were an original agreement. This would be the total of the original amount of the agreement plus/minus any renewals/amendments processed during the life of the agreement.

Item #10: Enter the amount to be expended/collected during each fiscal year of the agreement.

Item #11 & #12: Self-explanatory

Item #13: Place a mark next to the type of source selection used to obtain the Contractor/Grantee. If a RFP was used indicate the RFP number. It is the expectation of IDOA that all agreements of \$75,000 and above will be solicited through a formal process. **If a "Special Procurement" was used, include a copy of the authorization letter. (See IC 5-22-10 for further information.)**

Item #14-#22: Enter agency specific information. This information will be used by signatory agencies to contact the agency concerning the contract and will be used to route the document.

Item #23-27: Enter Contractor/Grantee specific information. Box #23 must be filled out, as the agreement can not be processed without this information. Accurate information will help expedite review of the document.

Item #28: If the Contractor/Grantee is considered a "Foreign Corporation" per IC 23-17-26 they must be registered with the Secretary of State's Office to do business with the State of Indiana. Confirm if necessary, by checking Secretary of State's website. You must mark yes, no or place and NA (not applicable) in the space provided.

Item #29, 30, 31& #32: Box #29 and 31 should include an indication as to whether there is minority and women's business involvement in the contract. Box #30 and 32 should list the percentage of the minority and women's business participation. IDOA pays attention to the number of contracts that come through without significant minority and women's business participation. You **must** justify contacts/grants over \$75,000 that do not have minority or women's business participation. Attach supporting documentation (M/WBE plan or waiver).

Item #33 & #34: Self-explanatory

Item #35: IC 4-23-16-8 requires ITOC approval on agreements for computer equipment/software.

Item #36: Self-explanatory

Item #37: Describe the work to be accomplished by the Contractor/Grantee. Also, include a brief reason why it is in the best interest of the State to expend the funds.

Item #38: Describe how/why the Contractor/Grantee was chosen. If a RFP was used, merely make reference to box #13. It is the expectation of IDOA that all agreements of \$75,000 and above will be solicited through a formal process. But for all contracts, if no formal process was used to select the recipient then you **MUST** explain how they were chosen and how you determined their price to be reasonable. (See page 19 for further information.)

Item #39: If the document is being placed into the signature cycle 30 days after the date indicated in box #11 you must explain why.

Items #40-46: Self-explanatory

EXECUTIVE DOCUMENT SUMMARY

State Form 41221 (R6 / 8-03)

Instructions for completing the EDS and the Contract process.

1. Please read the guidelines on the back of this form.
2. Please type all information.
3. Check all boxes that apply.
4. For amendments / renewals, attach original contract.
5. Attach additional pages if necessary.

1. EDS #:		2. Date prepared:	
3. CONTRACTS & LEASES <input type="checkbox"/> Professional/Personal Services <input type="checkbox"/> Contract for Procured Services <input type="checkbox"/> Grant <input type="checkbox"/> Maintenance <input type="checkbox"/> Lease <input type="checkbox"/> License Agreement <input type="checkbox"/> Attorney <input type="checkbox"/> Amendment # _____ <input type="checkbox"/> MOU <input type="checkbox"/> Renewal # _____ <input type="checkbox"/> Other _____			
FISCAL INFORMATION			
4. Account Number:		5. Account Name:	
6. Total amount this action:		7. New contract total:	
8. Revenue generated this action:		9. Revenue generated total contract:	
10. New total amount for each fiscal year:			
Year _____ \$ _____ Year _____ \$ _____ Year _____ \$ _____ Year _____ \$ _____			
TIME PERIOD COVERED IN THIS EDS			
11. From (month, day, year):		12. To (month, day, year):	
13. Method of source selection: <input type="checkbox"/> Negotiated <input type="checkbox"/> Bid/Quotation <input type="checkbox"/> Emergency <input type="checkbox"/> Special Procurement <input type="checkbox"/> RFP # _____ <input type="checkbox"/> Other (specify) _____			
AGENCY INFORMATION 14. Name of agency: _____ 15. Requisition Number: _____ 16. Address: _____			
AGENCY CONTACT INFORMATION 17. Name: _____ 18. Telephone #: _____ 19. E-mail address: _____			
COURIER INFORMATION			
20. Name:		21. Telephone #:	
22. E-mail address: _____			
VENDOR INFORMATION			
23. Taxpayer Identification Number: _____			
24. Name:		25. Telephone #:	
26. Address: _____			
27. E-mail address: _____			
28. Is the vendor registered with the Secretary of State? (Out of State Corporations, must be registered) <input type="checkbox"/> Yes <input type="checkbox"/> No			
29. Primary Vendor: M/WBE Minority: <input type="checkbox"/> Yes <input type="checkbox"/> No Women: <input type="checkbox"/> Yes <input type="checkbox"/> No		30. If yes, list the %: Minority: _____ % Women: _____ %	
31. Sub Vendor: M/WBE Minority: <input type="checkbox"/> Yes <input type="checkbox"/> No Women: <input type="checkbox"/> Yes <input type="checkbox"/> No		32. If yes, list the %: Minority: _____ % Women: _____ %	
33. Is there Renewal Language in the document? <input type="checkbox"/> Yes <input type="checkbox"/> No		34. Is there a "Termination for Convenience" clause in the document? <input type="checkbox"/> Yes <input type="checkbox"/> No	
35. Will the attached document involve data processing or telecommunications systems(s)? <input type="checkbox"/> Yes: ITOC or Delegate has signed off on contract			
36. Statutory Authority (Cite applicable Indiana or Federal Codes):			
37. Description of work & justification for spending money. (Please give a brief description of the scope of work included in this agreement.)			
38. Justification of vendor selection and determination of price reasonableness:			
39. If this contract is submitted late, please explain why: (Required if more than 30 days late.)			
SIGNATURES			
40. Agency fiscal officer or representative approval	41. Date Approved	42. Budget agency approval	43. Date Approved
44. Attorney General's Office approval	45. Date Approved	46. Agency representative receiving from AG	47. Date Approved

BOX # 1	The EDS number is constructed by combining the agency identification number, the fiscal year, and the last section is assigned by your agency as a unique identifier. MUST BE COMPLETED.
2	Enter the date the EDS is being prepared for routing.
3	Place a check mark by the appropriate type of agreement being routed. If the agreement is a renewal or amendment please insert the sequence number (i.e. renewal #1, amendment #2)
4 & 5	Enter the account number and account name that will fund this agreement.
6	Enter the dollar amount of the agreement being routed.
7	Enter the total dollar amount of the entire agreement (i.e. original contract amount plus any renewals/amendments.).
8	THIS ONLY APPLIES TO MONEY BEING RECEIVED BY THE STATE. Enter the amount of money being received by the agency from this agreement.
9	Enter the total dollar amount of money being received by the State for the entire agreement (i.e. original contract amount plus any renewals/amendments).
10	This box must be completed if a contract crosses fiscal years. Indicate the amount of funding for each appropriate fiscal year. Example: A contract starting in fiscal year 2001 and being completed in fiscal year 2002 would have 2001 with a dollar amount and 2002 with a dollar amount. Ensure that the dollar amounts listed in this box will be equal to the dollar amount for the entire agreement.
11 & 12	Enter the date the agreement will begin and end. If this date is determined by the date of the last signatory, enter an estimated date. THERE MUST BE DATES ENTERED.
13	Check the method used to select the contractor for this agreement. If a special procurement was used, you must attach an approval letter. If no solicitation occurred for contracts in the amount of \$75,000 and over, you must attach a letter of justification.
14 & 16	Enter name and address of agency requesting contract.
15	Enter a requisition number ONLY if your agency is attaching a requisition to the contract during signature cycle.
17, 18, & 19	Enter the name, telephone number and e-mail address of the individual in your agency to contact with questions about the attached agreement.
20, 21, & 22	Enter the name, telephone number and e-mail address of the individual responsible for routing this agreement.
23	Enter the Federal Employment identification number of the contractor. If the contractor is an individual, this could be a social security number. THIS AREA MUST BE FILLED IN TO PROCESS THE AGREEMENT.
24, 25, 26, & 27	Enter the name, telephone number, address and e-mail address of the contractor involved with the agreement. Enter the information necessary for your agency, only the name is vital for contract processing.
28	If your contractor is a corporation and the address is outside of the State of Indiana, they must be registered with the Secretary of State's office to do business with the State of Indiana. (IC 23-17-26 & IC 23-1-49-1 & IC 5-22-16-4)
29, 30, 31 & 32	Check "NO" unless a minority owns 51% or more of a company. If 51% or more of the company is minority owned, a 100% should be entered in the percentage space. If a sub-contractor is minority owned, the percentage of the dollar amount of the contract performed by the minority sub-contractor should be entered in the percentage space.
33&34	Self-explanatory: Check the appropriate answer for each question.
35	Check this box if this agreement must be submitted to ITOC for approval.
36	Cite applicable Indiana or Federal codes that apply to this agreement.
37	Insert a brief description of the work included in the agreement and why the state should spend the money.
38	Enter the manner of source selection. If a formal BAA/RFP were used merely, enter the BAA/RFP number. If no formal process were used, enter how your agency chose the vendor and how you determined the price offered to be reasonable.
39	If your agreement is being placed in the signature cycle more than 30 days after the agreement has started, enter an explanation as to why. (i.e. start date 7/1/01 put in to signature cycle on 8/5/01)
40 & 41	The agency fiscal officer should initial and date this box.

Getting Started: Things to Consider *Before* Developing Your Contract

The following items should be considered prior to beginning your contract:

Clauses required by the Federal Government

The federal government frequently requires certain boilerplate in contracts where the receipt of federal funds is involved. The required boilerplate varies with the source of the funds. This Manual does not attempt to address this type of boilerplate. If your contract will involve federal funds, check with your agency legal section or program management to make sure all necessary clauses are included.

Does this document belong in the Contract Management Section or the Procurement Division?

The Department of Administration is working to ensure that there is a clear distinction between the Contract Management Section and the Procurement Division.

Contract Management Section:

If your contract will be used to obtain Professional/Personal Services, provide grant funds, or obtain Real Estate Services, it should be forwarded to the Contract Management Section for review and approval.

The following are descriptions of different contract types reviewed/approved by the Contract Management Section:

Professional Services: Any type of service that may be legally performed only by: an accounting professional, an architectural or engineering professional, an attorney, a health care professional, a veterinarian, or a real estate professional. A person licensed, certified or registered by a board, an expert witness, investigator, or a person empowered to conduct religious services. Any type of firm, company, or corporation which will supply services using the expertise of any of the above mentioned professionals.

Personal Services: Any type of service where the Contractor is an individual who performs services of a specialized nature as an independent Contractor.

Grants: Contract whereby the State of Indiana is providing a gift to be used for a particular purpose.

If a State agency desires to secure Professional/Personal services for itself with Grant Funds it has obtained, the resulting contract is not a grant but a Professional/Personal Services contract.

Leases and Deeds: A contract where the object in question is real property (land and/or real estate).

If an agency forwards a contract to the Contract Management Section that does not

fall into one of the above categories, the contract may be returned so it may be forwarded by the agency to the Procurement Division. This will delay the processing of the contract, so it is highly recommended that agencies become familiar with the various contract types.

Procurement Division:

Non-Personal Services must be handled by the Department of Administration's Procurement Division. If the purpose of your contract is to obtain any of the following types of services, it should be forwarded to the Procurement Division for review and approval.

Type of Service:	Example:
Service Agreement	Uniform Rental Security Guard Service Janitorial Service Pest Control Landscaping
Equipment Lease	Copier Lease Laundry and Equipment Rental
Maintenance Agreement (Includes installation)	Copier Maintenance Appliance Maintenance
Licensing of Computer Software and Software support/maintenance	

The above list should not be considered all-inclusive, but rather are examples of "Non-Personal Services" which may be obtained by contract.

If an agency forwards a contract to the Procurement Division that does not fall within one of the above categories, the contract may be returned so it may be forwarded by the agency to the Contract Management Section. This will delay the processing of the contract, so it is highly recommended that agencies become familiar with the various contract types.

Methods of Source Selection

When agencies decide that there is a need to obtain services from an outside Contractor, the process should include some form of competition. Justification for selection of the Contractor and the method of source selection must be provided on the EDS. Here are some guidelines.

- ◆ For contracts under \$75,000, agencies are expected to follow proper procurement procedures.
- ◆ Three (3) competitive written quotations should be obtained via a Request for Quotation (RFQ).
Quotations should be put in order and labeled.

- ◆ Get informal quotations from at least three sources.
- ◆ The use of public notices in news publications can aid in acquiring competitive quotes.
- ◆ Contracts greater than \$75,000 annually must be publicly solicited by the RFP process unless an exception is approved by IDOA. Requests for an exception must be sent to the Deputy Commissioner of IDOA. The Procurement Division will assist you in the RFP process. For additional information, call 232-3034.
- ◆ If a RFP is not used, IDOA will review the justification provided on the EDS describing how the contract was competitively procured. If a justification is not supplied at this dollar amount, your contract may be rejected.
- ◆ If a contract is negotiated (without competition), an explanation must be provided as to:
 - ◆ Why was this Contractor chosen?
 - ◆ Did the agency contact other potential Contractors?
 - ◆ How did the agency arrive at the price?
 - ◆ Why is the price fair and reasonable under the circumstances?
 - ◆ Was there an initial government estimate?
 - ◆ Did formal negotiation proceedings take place?
 - ◆ Did the agency document its discussions with the Contractor?

If this information is not provided your contract may be rejected.
- ◆ If the contract went through the RFP process, the number of the RFP and the date the recommendation was approved by IDOA should be included on the Executive Document Summary (EDS) for reference.
- ◆ Regardless of the process used to obtain a Contractor, some explanation should be provided as to how the agency selected the Contractor.
- ◆ At times it will be necessary to use an out-of-state Contractor, but great efforts should be made to keep this to a minimum. If it is necessary to use an out-of-state Contractor, a thorough justification should accompany the contract. (Use the above guidelines for justification.)

IS IT A CONTRACT OR A GRANT?

The terms contract and grant are often used interchangeably and this misuse results in operational inconsistencies, confusion, inefficiency and waste. The confusion stems from the fact that a contract and a grant contain the same essential elements: competent parties, lawful subject matter, sufficient consideration and consent of minds. However, contracts create “state procurement relationships” and grants create “state assistance relationships.” IDOA frowns upon state agencies attempting to avoid the competitive procurement process necessary for a contract by inappropriately framing a contract as a grant.

A procurement contract should be used whenever the state agency wishes to buy, lease, or exchange property or services for the **direct benefit of the state agency**. This is the standard buyer-seller relationship. Also, when a state agency’s principal purpose is to **acquire an intermediary’s services**, which ultimately may or may not be delivered to an authorized recipient, then a contract is required. When the term “competitive procurement” (i.e. the use of Request for Proposals (RFPs)) is used, it refers to contracting for goods and services under a sealed bid or competitive negotiation procedure, and does not usually include grant proposals. For example, when a state agency hires a private entity to perform a function or a duty which the state agency otherwise would perform itself, a procurement contract is necessary. Contracts contain clearly defined deliverables (i.e. what you are purchasing) that tie the duties of the contractor to payment.

On the other hand, when the relationship established is for the transfer of money, property, services or anything of value to the recipient **to accomplish a public purpose of support or stimulation**, and the state agencies’ role is passive or no state agency involvement is anticipated during the performance of the activity, then a grant award is created. The purpose of a grant is to benefit some identified segment of the public, rather than the state agency. The relationship between the state agency and the recipient of the grant is a partnership, or, the state agency acts as a patron of the grantee. As a grantor, the state agency’s purpose is only to **assist an intermediary in providing goods or services** to an authorized recipient. A grantee is normally free to choose for itself the best means to implement the grant purpose, subject only to the applicable statutes and the terms of the grant agreement. The state agency should still have strict criteria to ensure up-front that the grant recipient is qualified and competent.

Grants may require the Grantee to do the following: comply with various record-keeping requirements; abide by certain requirements regarding the purchase and ownership of equipment, submit budgets concerning cost allocation, cost sharing, the retention of consultants, travel expenses and the treatment of certain income earned as a result of the grant; obtain Grantor’s written approval before making significant changes; comply with various federal statutes; and make progress reports and final reports to the Grantor. As such, a Grantor may evaluate the progress of a Grantee by review of technical or fiscal reports or by site visits, to determine that performance is consistent with objectives, terms and conditions of the award, and a Grantor may require a Grantee to abide by general statutory, regulatory or administrative policy requirements. However, a grant should not contain clearly defined deliverables (i.e.

there is no specific purchase like a contract) that tie the duties of the contractor to payment.

Here are examples of when a contract should be used and when a grant should be used:

A state agency is mandated by statute to administer a program in which Federal funds are passed through to local entities for the provision of day care to disadvantaged mothers.

If the state agency wishes to administer that program with its own staff, the document used to pass through the funds to the actual day care providers would be a grant agreement. But if the state agency wishes to agree with a company to assist in the administration of that program, an express duty of the state agency itself, a contract would be required.

Minority Business Enterprise

Minority/Women's Business Enterprise Supplement to follow at a later date

Independent Contractor Determination

It is your responsibility to ensure that all Contractors and employees are in a status that reflects the appropriate classification. Personal service contracts that may create or appear to create an employment relationship under IRS guidelines cause grave tax consequences for the State and potential inequities to the individuals providing the services. Any decision by IDOA to deny a contract due to a decision that an employee status would be created is final. If your contract appears to contain several of the indicators which appear under the employee section below, you may wish to contact an IDOA representative for guidance. Use this as a guide to ensure your agency's compliance. Your agency may be required to analyze, in writing the service sought in relation to the IRS factors. If so, the agency must retain the analysis and keep it in the particular contract file for audit purposes.

Employee

- Receives instructions about when, where and how work is to be performed.
- Trained by an experienced employee. Required to take training courses. Must attend meetings.
- Services of the individual are merged into the business. Success, continuation of business depends upon these services.
- Services must be rendered personally, not able to engage others to do the work.
- Hires, supervises and pays workers at the direction of the employer (acts as representative).
- The individual continues to work for the same person year after year.
- The employer sets the hours and days.
- Must devote full-time to the business of the employer. Restricts him or her from doing other gainful work.

Independent Contractor

- Does the job his or her own way without any kind of instructions.
- Uses his or her own methods and receives no training from the purchaser.
- Success and continuation of business aren't dependent on his or her services.
- Contractor able to assign one of his or her assistants to do the job.
- Hires, supervises, and pays other workers and is responsible for the results.
- Hired for one job; no continuous relationship. May or may not be used again at a later date.
- Is master of his or her own time.
- Free to work when and for whom he or she chooses.

- Implies that the employer has control, is physically within the employer's direction and supervision.
- Performs services in the order or sequence set by the employer.
- Required to submit regular oral or written reports to the employer.
- Paid by the employer in regular amounts at stated intervals.
- The employer pays the person's business and/or travel expenses.
- Employer furnishes tools, materials, etc.
- Little or no investment; depends on the employer for facilities and equipment necessary for the work.
- Cannot realize a profit or loss; is basically paid for services rendered.
- Usually works for one employer.
- Does not make his or her services available to the public except through the company for which he or she works.
- Can be discharged at any time.
- Can end his or her relationship with employer at any time.
- Works off employer's premises uses own office, desk, and telephone.
- Concerned about the end result; sets his or her own sequence as to how that is accomplished.
- Submits no reports.
- Paid a flat amount for the job.
- Is responsible for his or her own expenses. They are not reimbursed for these costs.
- Furnishes his or her own tools.
- Has a real, essential and adequate investment.
- Can realize a profit or suffer a loss as a result of his or her service.
- Works for a number of persons or firms at the same time.
- Has own office and assistants. Holds business license, listed in business directories or maintains business telephone. Advertises in newspaper.
- Cannot be fired so long as he or she produces a result that meets contract specifications.
- Is legally responsible for satisfactorily completing a specific job.

Contractor Name Change – Contract Change Requirements

Whenever you are notified and/or become aware that a company you have under contract is or has changed their name you must take the necessary steps to amend your contract to reflect the new name. This process is to be used no matter what type of contract you may have (procurement contract, professional services contract, etc.). There are many scenarios that may cause a firm to change names and since we can't possibly address each one we will address the two we see most often in our environment. Further, since there are many scenarios, IDOA reserves the right to request any additional documentation that may be necessary to protect the State's interest.

Name change due to corporate restructuring

If the change is merely a change in name due to corporate restructuring or divestiture the firm would need to supply corporate documentation used to officially register the name change, to the agency. A simple letter from the firm giving notification of the change is not acceptable; we must have official corporate documentation. This document would be attached to an amendment to the original contract and would be signed by all appropriate state agencies (IDOA, Budget, AG). Keep in mind the necessity for Secretary of State registration, of the new name, if the entity is considered a foreign corporation.

Name change due to buy-out

If the change is due to the sale and subsequent purchase of a firm at least two documents are necessary; a copy of the corporate documents used to officially register the sale and corporate documents used to officially register the change in name of the purchased firm. A simple letter announcing the buyout is not sufficient, official corporate documentation is necessary. These documents would be attached to an amendment to the original contract and would be signed by all appropriate state agencies (IDOA, Budget, AG). Keep in mind the necessity for Secretary of State registration, of the new name, if the entity is considered a foreign corporation.

As stated previously, there are many scenarios that may cause a firm to change names and as such the IDOA reserves the right to request any other documentation that may be necessary to fully verify the change being request by the contractor. The above two scenarios are merely examples and not an exhaustive listing of events and required documentation. The IDOA reserves the right to request any additional documentation that we believe is necessary to protect the State's interest. If you are unsure of what is necessary, please contact IDOA for guidance.

Is a Memorandum of Understanding (MOU) Acceptable?

MOUs are utilized only to establish an agreement between state agencies, as defined in IC 4-13-1-1.

IC 4-13-1-1

Short title; "state agency" defined; use of department services by other entities

Sec. 1. (a) This chapter shall be known and may be cited as the "Administration Act of 1961".

(b) As used in this chapter, "state agency" means an authority, board, branch, commission, committee, department, division, or other instrumentality of the executive, including the administrative, department of state government. The term "state agency" does not include the judicial or legislative departments of state government, nor does that term include a state educational institution as defined in IC 20-12-0.5-1.

MOUs between state agencies are not a procurement method, but are instead a partnership agreement. In general, state oversight agencies do not need to sign MOUs between state agencies. As such, MOUs do not need to be routed through the signatory process and the Department of Administration, the State Budget Agency or the Office of the Attorney General do not need to be involved. A partnership between state agencies can also include the exchange of money for services without the need for a formal contract. However, there are situations when an agreement between two state agencies requires a formal contract. If an agency has received federal funds and the federal funding source requires a formal contract before the receiving agency can disburse the funds to other state agencies, a contract will be necessary. But any formal contract used between state agencies should be modified to delete clauses inappropriate for such a situation, e.g. indemnification. One state agency will not, in actuality, indemnify another.

If any activity included in a MOU requires the inclusion of a party other than a state agency, a standard contract boilerplate will be necessary and must be submitted for approval.

Contract Development

Contract Development

Professional/Personal Service Contract Boilerplate

The following pages include Boilerplate clauses for **Professional/Personal Service Contracts**. The use of a good agency or division Boilerplate that meets your contracting needs is a great management tool and time-saver.

Reminders:

1. IDOA's Contract Division can provide you with a copy of a Boilerplate Contract. We can give you a hard copy, a disk copy or you can obtain it from our web site at <http://www2.idoa.state.in.us>, select Contracts and then Contract Development Manual. For the disk copy, you must have the ability to utilize WordPerfect 6.1 or Microsoft Word 97. Call us to make arrangements. We will be happy to accommodate you.
2. Certain clauses have been designated as **required** and must be included in every contract. Other clauses are presented for your use and you should include as many as necessary to meet your agency needs.
3. Remove the instruction language from the clauses before inserting them in your contract.
4. We have numbered the Boilerplate clauses. **Please do not alter the numbering of the clauses.** Should you decide that one of the clauses is not necessary, please keep the number and follow it with the phrase, "*Deleted by agreement of the parties.*"
5. Please include a completed Executive Document Summary as the face sheet of your contract.
6. Do not include limitations on liability and/or language in your contract that voids warranties for "fitness for a particular purpose" and merchantability.

PROFESSIONAL/PERSONAL SERVICES CONTRACT

This Contract, entered into by and between _____ (hereinafter referred to as "State") and _____ (hereinafter referred to as "Contractor"), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

1. Duties of Contractor

The Duties of Contractor should outline the exact services to be performed. Detailing those services ensures that your agency and the Contractor understand exactly what should be provided and lessens the chances that misunderstandings will arise. THIS SHOULD BE THE FIRST CLAUSE OF THE CONTRACT.

The Contractor shall provide the following services relative to this Contract:

2. Consideration

Consideration should be stated as a definite amount at a certain rate with a ceiling limitation (per hour, per deliverable, per day, etc.). IDOA requires a not-to-exceed figure on total payments when a rate system is used. THIS SHOULD BE THE SECOND CLAUSE OF THE CONTRACT.

The Contractor will be paid at the rate of _____ for doing _____.
Total remuneration under this Contract shall not exceed _____.

3. Term

Term should clearly state the duration of the agreement either by giving a specific beginning and ending date, (month, day and year) or a duration that begins after the date of the last State signatory. There is no statutory term limit on service contracts. However, as a matter of policy we will retain the 4-year limit, but are willing to discuss longer terms on a case by case basis. THIS SHOULD BE THE THIRD CLAUSE OF THE CONTRACT.

This Contract shall be effective for a period of _____. It shall commence on _____ and shall remain in effect through _____.

Please be advised that the following paragraphs 4 through 49 are defined by IDOA as State Boilerplate clauses. State Boilerplate clauses shall remain unaltered and in their standard form, unless any changes or alterations are documented as required under Paragraph 50, "Boilerplate Affirmation Clause".

4. Access to Records

The Contractor and its subcontractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under

this Contract. They shall make such materials available at their respective offices at all reasonable times during this Contract term, and for three (3) years from the date of final payment under this Contract, for inspection by the State or by any other authorized representative of state government. Copies thereof shall be furnished at no cost to the State if requested.

5. Assignment

The Contractor shall not assign or subcontract the whole or any part of this Contract without the State's prior written consent. The Contractor may assign its right to receive payments to such third parties as the Contractor may desire without the prior written consent of the State, provided that Contractor gives written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Contract and shall not be made to more than one party.

6. Audits

Contractor acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with IC 5-11-1, and audit guidelines specified by the State.

7. Authority to Bind Contractor

This clause can be extremely important particularly when a contract has been negotiated without the benefit of a RFP.

Notwithstanding anything in this Contract to the contrary, the signatory for the Contractor represents that he/she has been duly authorized to execute contracts on behalf of the Contractor and has obtained all necessary or applicable approvals from the home office of the Contractor to make this Contract fully binding upon the Contractor when his/her signature is affixed, and this Contract is not subject to further acceptance by Contractor when accepted by the State of Indiana.

8. Changes in Work

This provision can be customized to meet your agency's contracting needs.

In the event the State requires a major change in the scope, character or complexity of the work after the work has begun, adjustments in compensation to the Contractor shall be determined by the State in the exercise of its good faith and prudent judgment. The Contractor shall not commence any additional work or change the scope of the work until authorized in writing by the State. No claim for additional compensation shall be made in the absence of a prior written approval executed by all signatories hereto.

9. Compliance with Laws

The Contractor shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, the provisions of which are incorporated by reference. The enactment or amendment of any applicable state or federal statute or the promulgation of any rules or regulations thereunder after execution of this Contract shall be reviewed by the State and the Contractor to determine whether the provisions of this Contract require formal modification.

10. Condition of Payment

All deliverables provided by the Contractor under this contract must be performed to the State's reasonable satisfaction, as determined at the discretion of the undersigned State representative and in accordance with all applicable federal, state, local laws, ordinances, rules, and regulations. The Contractor will not receive payment for work found by the State to be unsatisfactory or performed in violation of federal, state, or local law.

11. Confidentiality of Data, Property Rights in Products, and Copyright Prohibition

The Contractor agrees that all information, data, findings, recommendations, proposals, etc. by whatever name described and in whatever form secured, developed, written or produced by the Contractor in furtherance of this Contract shall be the property of the State. The Contractor shall take such action as is necessary under law to preserve such confidentiality and property rights in and of the State while such property is within the control and/or custody of the Contractor. The Contractor hereby specifically waives and/or releases to the State any cognizable property right of the Contractor to copyright, license, patent or otherwise use such information, data, findings, recommendations, proposals, etc.

12. Confidentiality of State Information

The Contractor understands and agrees that data, materials, and information disclosed to Contractor may contain confidential and protected data. Therefore, the Contractor promises and assures that data, material, and information gathered, based upon or disclosed to the Contractor for the purpose of this Contract, will not be disclosed to others or discussed with third parties without the prior written consent of the State.

13. RECORDS, REPORTS, INSPECTIONS AND AUDITS

Following the expiration of this Contract, Contractor shall arrange for a financial and compliance audit of funds provided by State pursuant to this Contract. Such audit is to be conducted by an independent public or certified public accountant (or as applicable, the State Board of Accounts), and performed in accordance with Indiana State Board of Accounts publication entitled "Guidelines for Financial Examination of Entities Receiving Assistance from Governmental Sources," and applicable provisions of the Office of Management and Budget Circulars A-133 (Audits of Institutions of Higher

Education and Other Non-Profit Organizations). Contractor is responsible for ensuring that the audit and any management letters are completed and forwarded to the "State" in accordance with the terms of this Contract. Audits conducted pursuant to this paragraph must be submitted no later than six (6) months following the close of the Contractor's fiscal year. Contractor agrees to provide the Indiana State Board of Accounts and the "State", an original of all financial and compliance audits. The audit shall be an audit of the actual entity, or distinct portion thereof that is the Contractor, and not of a parent, member, or subsidiary corporation of the Contractor, except to the extent such an expanded audit may be determined by the Auditor or the State to be in the best interests of the State. The audit shall include a statement from the Auditor that the Auditor has reviewed this Contract and that the Contractor is not out of compliance with the financial aspects of this Contract.

14. Conflict of Interest

You **MUST** have this clause. If you are using federal dollars and federal language is required, we will accept it in place of the following language.

- A. As used in this section:
 - "Immediate family" means the spouse and the unemancipated children of an individual.
 - "Interested party," means:
 - 1. The individual executing this contract;
 - 2. An individual who has an interest of three percent (3%) or more of Contractor, if Contractor is not an individual; or
 - 3. Any member of the immediate family of an individual specified under subdivision 1 or 2.
 - "Department" means the Indiana Department of Administration.
 - "Commission" means the State Ethics Commission.
- B. The Department may cancel this Contract without recourse by Contractor if any interested party is an employee of the State of Indiana.
- C. The Department will not exercise its right of cancellation under section B above if the Contractor gives the Department an opinion by the Commission indicating that the existence of this Contract and the employment by the State of Indiana of the interested party does not violate any statute or rule relating to ethical conduct of state employees. The Department may take action, including cancellation of this Contract consistent with an opinion of the Commission obtained under this section.
- D. Contractor has an affirmative obligation under this Contract to disclose to the Department when an interested party is or becomes an employee of the State of Indiana. The obligation under this section extends only to those facts that Contractor knows or reasonably could know.

15. Continuity of Services

This clause is vital in certain types of contracts, particularly those involving the administration of essential programs. But often, inclusion of this clause is unnecessary and confusing to the vendor. Do not hesitate to delete it when it is inappropriate.

- A. The Contractor recognizes that the service(s) to be performed under this Contract are vital to the State and must be continued without interruption and that, upon Contract expiration, a successor, either the State or another contractor, may continue them. The Contractor agrees to:
 - 1. Furnish phase-in training, and
 - 2. Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.
- B. The Contractor shall, upon the State's written notice:
 - 1. Furnish phase-in, phase-out services for up to sixty (60) days after this Contract expires, and
 - 2. Negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required.

The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the State's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this Contract are maintained at the required level of proficiency.

- C. The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this Contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations).

16. Debarment and Suspension

Contractor certifies, by entering into this Contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State of Indiana. The term "principal" for purposes of this Contract means an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of Contractor. The Contractor also further certifies that it has verified the suspension and debarment status for all sub-contractors receiving funds under this contract and is solely responsible for any paybacks and or penalties that might arise from non-compliance.

17. Default by State

If the State, sixty (60) days after receipt of written notice, fails to correct or cure any breach of this Contract, then the Contractor may cancel and terminate this Contract and collect all monies due up to and including the date of termination.

18. Disputes

This is a very important clause. You should use it with every contract. This gives you and the Contractor an avenue to settle grievances, rather than to terminate the contract. No authority can replace that of the Commissioner of the Indiana Department of Administration.

A. Should any disputes arise with respect to this Contract, Contractor and the State agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.

B. The Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all its responsibilities under this Contract that are not affected by the dispute. Should the Contractor fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by the State or the Contractor as a result of such failure to proceed shall be borne by the Contractor, and the Contractor shall make no claim against the State for such costs. If the State and the Contractor cannot resolve a dispute within ten (10) working days following notification in writing by either party of the existence of a dispute, then the following procedure shall apply:

The parties agree to resolve such matters through submission of their dispute to the Commissioner of the Indiana Department of Administration. The Commissioner shall reduce a decision to writing and mail or otherwise furnish a copy thereof to the Contractor and the State within ten (10) working days after presentation of such dispute for action. The Commissioner's decision shall be final and conclusive unless either party mails or otherwise furnishes to the Commissioner, within ten (10) working days after receipt of the Commissioner's decision, a written appeal. Within ten (10) working days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. If no reconsideration is provided within ten (10) working days, the parties may mutually agree to submit the dispute to arbitration for a determination, or otherwise the dispute may be submitted to an Indiana court of competent jurisdiction.

The State may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the State to the Contractor of one or more invoices not in dispute in accordance with the terms of this Contract will not be cause for Contractor to terminate this Contract, and the Contractor may bring suit to collect these amounts without following the disputes procedure contained herein.

19. Drug-Free Workplace Certification

You MUST have this clause. Earlier versions of the Contract Manual referred to a separate Certification Agreement. We have incorporated the language from the old Certification agreement into the language of this clause. This clause replaces any previous Drug Free language.

The Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. Contractor will give written notice to the State within ten (10) days after receiving actual notice that the Contractor or an employee of the Contractor has been convicted of a criminal drug violation occurring in the contractor's workplace.

False certification or violation of the certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Contract and/or debarment of contracting opportunities with the State of Indiana for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total contract amount set forth in this Contract is in excess of \$25,000.00, Contractor hereby further agrees that this agreement is expressly subject to the terms, conditions, and representations of the following certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. Pursuant to its delegated authority, the Indiana Department of Administration is requiring the inclusion of this certification in all contracts and grants from the State of Indiana in excess of \$25,000.00. No award of a contract shall be made, and no contract, purchase order or agreement, the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been fully executed by the Contractor and made a part of the contract or agreement as part of the contract documents.

The Contractor certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
- B. Establishing a drug-free awareness program to inform it's employees of (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the Contractor of any criminal drug statute

conviction for a violation occurring in the workplace no later than five (5) days after such conviction;

- D. Notifying in writing the State within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;
- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

20. Employment Option

If the State determines that it would be in the State's best interest to hire an employee of the Contractor, the Contractor will release the selected employee from any non-compete agreements that may be in effect. This release will be at no cost to the State or the employee.

21. Force Majeure

In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

22. Funding Cancellation

You **MUST** have this clause. **It is required by IC 5-22-17-5.** Even in instances where no dollars are being expended, this is still required.

When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Contract, this Contract shall be canceled. A determination by the Budget Director that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

23. Governing Laws

This clause is very important in all contracts. Many Contractors want to alter the clause to include the laws of the state in which their parent company resides. This is not acceptable.

This Contract shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.

24. Indemnification

Also called a Hold-Harmless Clause; **NEVER** include a clause that the State will hold harmless or indemnify the other party.

Contractor agrees to indemnify, defend, and hold harmless the State of Indiana and its agents, officials, and employees from all claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission of the Contractor and/or its subcontractors, if any. The State shall **not** provide such indemnification to the Contractor.

25. Independent Contractor

This is a very important clause. Refer to the earlier section in the manual that addresses abuses of this option per IRS rulings.

Both parties hereto, in the performance of this Contract, shall act in an individual capacity and not as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume liability for any injury (including death) to any persons, or damage to any property arising out of the acts or omissions of the agents, employees or subcontractors of the other party.

The Contractor shall be responsible for providing all necessary unemployment and workers' compensation insurance for the Contractor's employees.

26. Information Technology Accessibility

Unless there is a waiver approved by ITOC, this clause should be used in all contracts having to do with procuring new Information Technology products and services to assure consideration for approval by ITOC.

All contractors supplying information technology related products and services to the state of Indiana must comply with all ITOC policies and standards. These policies and standards can be found at http://www.in.gov/itoc/html_site/architecture/poli.html and http://www.in.gov/itoc/html_site/architecture/stan.html. Any deviation from the

published standards and policies must be approved by ITOC and be supported by a written waiver.

The Contractor acknowledges and agrees that all hardware, software and services provided to or purchased by the State must be compatible with the principles and goals contained in the electronic and information technology accessibility standards adopted by the Architectural and Transportation Barriers Compliance Board under Section 508 of the Federal Rehabilitation Act of 1973 (29 U.S.C. 749d), as amended, and adopted by the State of Indiana Information Technology Oversight Commission pursuant to IC 4-23-16-12.

27. Insurance

Some of follow types of insurance and/or clauses are not appropriate for certain contracts. However, every contract must include General Liability insurance coverage and Workers Compensation insurance

a) The Contractor shall secure and keep in force during the term of this agreement, the following insurance coverages, covering the Contractor for any and all claims of any nature which may in any manner arise out of or result from this agreement:

- 1) Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits of \$500,000 per person and \$1,000,000 per occurrence unless additional coverage is required by the State.
- 2) Professional errors and omissions, including a three year "tail coverage endorsement," with minimum liability limits of \$1,000,000 per occurrence and in the aggregate.
- 3) Automobile liability with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 4) Workers compensation coverage meeting all statutory requirements of IC 22-3-2. In addition, an "all states endorsement" covering claims occurring outside the state of Indiana if any of the services provided under this agreement involve work outside the state of Indiana. The Contractor shall provide proof of such insurance coverage by tendering to the undersigned State representative, a certificate of insurance prior to the commencement of this agreement.

b) The Contractor's insurance coverage must meet the following additional requirements:

- 1) Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the Contractor.
- 2) The State will be defended, indemnified, and held harmless to the full extent of any coverage actually secured by the Contractor in excess of the minimum requirements set forth above. The duty to indemnify the State under this agreement shall not be limited by the insurance required in this agreement.
- 3) The insurance required in this agreement, through a policy or endorsement, shall include a provision that the policy and endorsements may not be

canceled or modified without thirty (30) days' prior written notice to the undersigned State representative.

- 4) Failure to provide insurance as required in this agreement is a material breach of contract entitling the State to immediately terminate this agreement.

The Contractor shall furnish a certificate of insurance and all endorsements to the undersigned State representative prior to the commencement of this agreement.

28. Key Person(s)

This clause should only be included if your agency has identified persons key to the success of the contract. The Key Person should be identified in the Duties section of the contract or may be included in this section.

- A. If both parties have designated that certain individual(s) are essential to the services offered, the parties agree that should such individual(s) leave their employment during the term of this Contract for whatever reason, the State shall have the right to terminate this Contract upon thirty (30) days prior written notice.
- B. In the event that the Contractor is an individual, that individual shall be considered a key person and, as such, essential to this Contract. Substitution of another for the Contractor shall not be permitted without express written consent of the State.
- C. Nothing in sections A and B, above shall be construed to prevent the Contractor from using the services of others to perform tasks ancillary to those tasks which directly require the expertise of the key person. Examples of such ancillary tasks include secretarial, clerical, and common labor duties. The Contractor shall, at all times, remain responsible for the performance of all necessary tasks, whether performed by a key person or others.

Key person to this Contract is _____

29. Licensing Standards

The parties agree that Contractor and its employees and subcontractors shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules or regulations governing services to be provided by the Contractor pursuant to this Contract. The State shall not be required to reimburse Contractor for any services performed when Contractor or its employees or subcontractors are not in compliance with such applicable standards, laws, rules or regulations. If licensure, certification or accreditation expires or is revoked, Contractor shall notify State immediately and the State, at its option, may immediately terminate this Contract.

30. Merger & Modification

This contract constitutes the entire agreement between the parties. No understandings, agreements, or representations, oral or written, not specified within

this contract will be valid provisions of this contract. This contract may not be modified, supplemented, or amended, in any manner, except by written agreement signed by all necessary parties.

31. Minority and Women Business Enterprise Compliance

The Contractor agrees to comply fully with the provisions of the Contractor's MBE/WBE participation plans, and agrees to comply with all Minority and Women Business Enterprise statutory and administrative code requirements and obligations, including IC 4-13-16.5 and 25 IAC 5.

The Contractor further agrees to cooperate fully with the minority and women's business enterprises division to facilitate the promotion, monitoring, and enforcement of the policies and goals of MBE/WBE program including any and all assessments, compliance reviews and audits that may be required.

32. Nondiscrimination

You MUST have this clause. Please see the following section for contracts using federal funding.

Pursuant to IC 22-9-1-10 and the Civil Rights Act of 1964, Contractor and its subcontractors shall not discriminate against any employee or applicant for employment in the performance of this Contract. The Contractor shall not discriminate with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry. Breach of this covenant may be regarded as a material breach of this Contract. The Contractor's execution of this Contract also signifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.

If federal funding is involved with the contract, you must include the following stipulated language.

The Contractor understands that the State is a recipient of federal funds. Pursuant to that understanding, the Contractor and its subcontractor, if any, agree that if the Contractor employs fifty (50) or more employees and does at least \$50,000.00 worth of business with the State and is not exempt, the Contractor will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. The Contractor shall comply with Section 202 of Executive Order 11246, as amended, 41 CFR 60-250, and 41 CFR 60-741, as amended, which are incorporated herein by specific reference. Breach of this covenant may be regarded as a material breach of this Contract.

33. Notice to Parties

If you include this clause in your contract, BE SURE to fill in the information appropriately.

Whenever any notice, statement or other communication is required under this Contract, it shall be sent to the following addresses, unless otherwise specifically advised.

A. Notices to the State shall be sent to:

(Include contact name and/or title, name of agency, specific address.)

B. Notices to the Contractor shall be sent to:

(Include contact name and/or title, name of vendor, specific address.)

C. Payments to the Contractor shall be sent to the address designated by Form W-9 on file with the auditor of state which is:

(Be specific.)

34. Order of Precedence

We strongly encourage the use of this clause. This clause can be extremely important when a problem arises. Word the clause accordingly. You can refer to a RFP, or Grant Application, replies to a RFP or Grant Application Request prepared by a Vendor/Grantee, etc. If you include this clause in your contract, PLEASE fill in the information appropriately.

Any inconsistency or ambiguity in this Contract shall be resolved by giving precedence in the following order: (1) This Contract, (2) attachments prepared by the State, (3) RFP#_____, (4) Contractor's response to RFP#_____, and (5) attachments prepared by the Contractor.

35. Ownership of Documents and Materials

All documents, records, programs, data, film, tape, articles, memoranda, and other materials not developed or licensed by the Contractor prior to execution of this Contract, but specifically developed under this Contract shall be considered "work for hire" and the Contractor transfers any ownership claim to the State of Indiana and all such materials will be the property of the State of Indiana. Use of these materials, other than related to contract performance by the Contractor, without the prior written consent of the State, is prohibited. During the performance of this Contract, the Contractor shall be responsible for any loss of or damage to these materials developed for or supplied by the State and used to develop or assist in the services provided herein while the materials are in the possession of the Contractor. Any loss or damage thereto shall be restored at the Contractor's expense. Full, immediate, and unrestricted access to the work product of the Contractor during the term of this Contract shall be available to the State.

36. Payments

This provision may be modified to stipulate the type of payment -- monthly, progress, per hour etc. Further detail can be added, such as how invoices should be submitted, in triplicate, etc.

All payment obligations shall be made in arrears in accordance with Indiana law and state fiscal policies and procedures.

37. Penalties/Interest/Attorney's Fees

The State will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest, or attorney's fees, except as required by Indiana law, in part, IC 5-17-5, IC 34-54-8, and IC 34-13-1.

Notwithstanding the provisions contained in IC 5-17-5, the Parties stipulate and agree that any liability resulting from the State of Indiana's failure to make prompt payment shall be based solely on the amount of funding originating from the State of Indiana and shall not be based on funding from federal or other sources.

38. Progress Reports

This provision may be modified to include specific dates or periods that reports are due. Please modify the language in such a way as to be appropriate for your agency.

The Contractor shall submit progress reports to the State upon request. The report shall be oral, unless the State, upon receipt of the oral report, should deem it necessary to have it in written form. The progress reports shall serve the purpose of assuring the State that work is progressing in line with the schedule, and that completion can be reasonably assured on the scheduled date.

39. Renewal Option

If there is the potential that your agency will want to renew the contract, this clause is **REQUIRED**. As a matter of policy we will retain the four (4)-year limit on renewals, but are willing to discuss longer terms on a case-by-case basis. If a contract is going to allow for a price increase, this increase must be spelled out in the original contract using "a commonly accepted index named in the contract" or "a formula set forth in the contract." **If you do not provide for a price increase in the original contract, you can not increase the price upon renewal but must do a formal amendment instead.**

Use this language if you are **NOT** allowing for a price increase.

This Contract may be renewed under the same terms and conditions subject to the approval of the Commissioner of the Department of Administration and the State

Budget Director in compliance with IC 5-22-17-4. The term of the renewed contract may not be longer than the term of the original contract.

Use this language if you **are** allowing for a price increase.

This contract may be renewed under the same terms and conditions subject to the approval of the Commissioner of the Department of Administration and the State Budget Director in compliance with IC 5-22-17-4. The term of the renewed contract may not be longer than the term of the original contract. Any subsequent renewal to this agreement may include an increase of up to _____ percent at the sole discretion of the State.

Highly Recommended

40. Security and Privacy of Health Information

If any final regulation or body of regulations relating to the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996 ("Final HIPAA Regulations"), or any amendment or judicial or administrative interpretation of the Final HIPAA Regulations, prohibits, restricts, limits or materially and adversely affects either party's rights or obligations hereunder, the parties shall negotiate, in good faith, reasonable revisions to this Contract for Services. The purpose of the negotiations shall be to revise the Contract for Services so that the affected party can comply and/or act in accordance with such Final HIPAA Regulations, or amendment or judicial or administrative interpretation thereof and avoid or mitigate such prohibition, restriction, limitation or material and adverse effect. If the parties fail to agree to such revisions within forty-five (45) days after written notice from the affected party requesting negotiations under this paragraph, this Contract for Services shall terminate. If so terminated the Contractor shall return all protected health information received from, created or received by the Contractor on behalf of the State. The Contractor shall retain no copies of such information in any form.

41. Severability

The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Contract.

42. Substantial Performance

This Contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any modification thereof.

43. Successors and Assignees

The Contractor binds its successors, executors, administrators, and assignees to all covenants of this Contract. Except as above set forth, the Contractor shall not assign, sublet or transfer interest in this Contract without the prior written consent of the State of Indiana.

44. Taxes

The State of Indiana is exempt from state, federal, and local taxes. The State will not be responsible for any taxes levied on the Contractor as a result of this Contract.

45. Termination for Convenience

While not mandatory, inclusion of this clause is highly recommended.

This Contract may be terminated, in whole or in part, by the State whenever, for any reason, the State determines that such termination is in the best interest of the State. Termination of services shall be effected by delivery to the Contractor of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The Contractor shall be compensated for services properly rendered prior to the effective date of termination. The State will not be liable for services performed after the effective date of termination. The Contractor shall be compensated for services herein provided but in no case shall total payment made to the Contractor exceed the original contract price or shall any price increase be allowed on individual line items if canceled only in part prior to the original termination date.

46. Termination for Default

- A. With the provision of thirty (30) days notice to the Contractor, the State may terminate this Contract in whole or in part, if the Contractor **fails to**:
 1. Correct or cure any breach of this Contract;
 2. Deliver the supplies or perform the services within the time specified in this Contract or any extension;
 3. Make progress so as to endanger performance of this Contract; or
 4. Perform any of the other provisions of this Contract.
- B. If the State terminates this Contract in whole or in part, it may acquire, under the terms and in the manner the State considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.
- C. The State shall pay the contract price for completed supplies delivered and services accepted. The Contractor and the State shall agree on the amount of

payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the State determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.

- D. The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or equity or under this Contract.

47. Registration with the Secretary of State of Indiana

This section is **required** by IC 5-22-16-4.

The Contractor certifies that if it is a non-domestic entity, it is registered with the Indiana Secretary of State to do business in the State of Indiana.

48. Travel

If your contract calls for travel, you must have this clause. The current Circular is #97-1.1. You have the option to include all travel expenses in the base price of the contract. When doing so, the provision below should be modified to state that all travel is included in accordance with Financial Management Circular #97-1.1.

Expenditures made by the Contractor for travel will be reimbursed by the State at the current rate paid by the State of Indiana. Travel expenses can only be reimbursed in accordance with the State Travel Policies and Procedures as specified in the current Financial Management Circular (#97-1.1). Out-of-state travel requests must be reviewed by the State for availability of funds and for appropriateness per Circular guidelines.

49. Waiver of Rights

No right conferred on either party under this Contract shall be deemed waived and no breach of this Contract excused, unless such waiver or excuse is in writing and signed by the party claimed to have waived such right.

50. Work Standards

The Contractor shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If the State becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this Contract, the State may request in writing the replacement of any or all such individuals, and Contractor shall grant such request.

51. State Boilerplate Affirmation Clause

I swear or affirm under the penalties of perjury that I have not altered, modified or changed the State's Boilerplate contract clauses (as defined in the 2003 IDOA

Professional Services Contract Manual) in any way except for the following clauses which are identified by name below:

Non-Collusion and Acceptance

You **MUST** have this clause in your contract. It is required by IC 5-22-16-6. **THIS SHOULD BE THE FINAL CLAUSE BEFORE THE SIGNATURE PAGE.** All Contracts, Amendments, Renewals, Addendums, etc. must include this clause.

The undersigned attests, subject to the penalties for perjury, that he/she is the Contractor, or that he/she is the representative, agent, member or officer of the contracting party, that he/she has not, nor has any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Contract other than that which appears upon the face of this Contract.

If there is substantial space between the last clause and the bottom of the page (before the signature page), you should include this statement in very visible form.

The rest of this page is left blank intentionally.

In Witness Whereof, Contractor and the State of Indiana have, through duly authorized representatives, entered into this Contract. The parties having read and understand the foregoing terms of this Contract do by their respective signatures dated below hereby agree to the terms thereof.

Contractor:

(Where Applicable)

By: _____

Printed Name: _____

Title: _____

Date: _____

Attested By: _____

State of Indiana Agency:

By: _____

Printed Name: _____

Title: _____

Date: _____

If a ITOC signature is necessary but the signature block is left blank, a statement must be inserted that authority has been delegated to this agency per a letter from ITOC dated ***.

Information Technology Oversight Commission

By: _____

Printed Name: _____

Title: _____

Date: _____

Department of Administration

Charles R. Martindale

Commissioner

Date: _____

State Budget Agency**Office of the Attorney General**

Marilyn F. Schultz

Director

Date: _____

Stephen Carter

Attorney General

Date: _____

If your contract has been approved by the Attorney General and/or the Budget Agency has granted you delegation, you will not need the Budget Agency or Attorney General's Signature. Once granted form approval, please attach a copy of the approval letter to your contract and place the following phrase in the Attorney General's signature block: "Form approval granted according to IC 4-13-2-14.3 on [date the form approval was granted]." The letter from the Attorney General's Office will contain the language needed in place of the signature.

EDS AND CONTRACT CHECK LIST

Before you send your contract through the signature approval process, check your contract against the following list. If all items are completed, your contract should not encounter any problems during the approval process.

EDS Checklist

	Document properly titled.
	Agency EDS number is complete. Agency automated purchasing system (APS) number - LAST digit from fiscal year – the number assigned by the agency or division.
	Account number/account name from agency fiscal officer.
	Total amount of this EDS action = new contract total.
	New total amount for each fiscal year: when added together should = new contract total.
	FROM/TO: FULL dates so time can be calculated.
	Name of State Agency/Division /Subdivision. Initials are okay.
	Address: the address to which the contract should be returned.
	Courier is generally the contract coordinator or the person responsible for tracking the progress of the contract. Make sure your Courier know something about the contract if his/her name is on it! The contract writer should be the person responsible for the development of the Contract. Individual requesting contract is generally the facility or division head (superintendent, director, etc.).
	Method of Source Selection: Be sure to indicate the RFP number.
	MUST have the Taxpayer Identification Number of the Contractor to enter the data into the system.
	Description of work: one to two sentences describing the scope of the contract.
	Items requested in box #35 and 36 MUST be provided.
	Approval of agency fiscal officer, verifying that funds are available.
	If your contract is being placed in the signature cycle more than 30 days after the agreement has started, enter an explanation as to why in box #35.
	Dollars match throughout EDS, Contract and all Attachments.
	Dates clearly stated (beginning/end) and match throughout EDS, Contract and all attachments. They are within the limits (4 years).
	All names are consistent throughout the EDS, Contract and all attachments.
	MUST have a Minority Business Plan and or Waiver request attached to the contract.
	EDS COMPLETE AND INCLUDED WITH CONTRACT AS FACE SHEET

Contract Checklist

	Terms spelled out, consistent, do not conflict with federal or state law, etc.
	All contract documents are paginated and in order.
	All references in contract correspond with appropriate clauses and attachments.
	Attachments/exhibits are attached following the signature page. All attachments/exhibits are labeled in accordance with the references made in the contract. No attachments/ exhibits have been included that were not referenced within the contract.
	IDOA EITHER RECOMMENDS OR REQUIRES THESE BOILERPLATE CLAUSES
	Conflict of Interest Statement MUST HAVE
	Drug-free workplace Certification MUST HAVE
	Duties of Contractor, Rate of Pay and Terms of Contract MUST HAVE
	Funding Cancellation MUST HAVE
	Non-Collusion Statement MUST HAVE
	Non-Discrimination Clause MUST HAVE
	Boilerplate Affirmation Clause MUST HAVE
	Disputes VERY IMPORTANT
	Order of Precedence VERY IMPORTANT
	Force Majeure; Suspension and Termination of Contract IMPORTANT
	Governing Laws IMPORTANT
	Indemnity (Hold-Harmless Clause) (State does not hold other party harmless) IMPORTANT
	Independent Contractor IMPORTANT
	Records, Reports, Inspections and Audits VERY USEFUL
	Renewal Option (no more than 4 years / percentage increase allowed, if any) VERY USEFUL
	Substantial Performance VERY USEFUL
	Travel VERY USEFUL (Must have if travel costs included in contract)
	SIGNATURE PAGE: Contractor and AGENCY Signature
	SIGNATURE PAGE: Remember to get ITOC Signature if necessary.
	SIGNATURE PAGE: Charles R. Martindale, Commissioner, Indiana Department of Administration
	SIGNATURE PAGE: Marilyn F. Schultz, Director, State Budget Agency
	SIGNATURE PAGE: Stephen Carter, Attorney General of Indiana
	CONTRACT COMPLETE WITH ALL NEEDED SIGNATURES

Grant Development

Grant Development

Grant Boilerplate

A Grant is a **GIFT**, but one in which we, the GIVER, can stipulate usage, reporting, and various other items. A contract should not be marked a grant unless there has been some application process where the state selected a Grantee based on certain usage requirements. When the state is the recipient of a grant from another source and will in turn use those funds to obtain services for the State from an outside entity, this would not be marked a grant. It would be a contract for services and solicitation guidelines would apply.

Reminders:

1. The following pages include Grant Boilerplate language. Only GRANT-SPECIFIC information is included here. Clauses that are mandatory for grants are included in this section. If there were clauses in the Professional/Personal Service Contract Boilerplate that would further protect your agency, feel free to include them. In any clause “borrowed” from the contract Boilerplate, please be sure to alter language to read “Grantee” rather than “Contractor.”
2. Due to the way this material is presented, the clauses are not necessarily in order, nor are they numbered. **PLEASE NUMBER YOUR CLAUSES**, either by Roman numeral (I, II) or by Arabic numeral (1, 2). You should also make sure that your references to other contract clauses and attachments are correct.
3. Remove the instruction language from the clauses before inserting them in your contract.
4. Certain clauses have been designated as required and must be included in every Grant. This includes an order of precedence clause if you incorporate a grant application into the agreement or if a grant application is used to clarify the expectations of the Grantee.
5. Please include a completed Executive Document Summary as the face sheet of your Grant.
6. If your agency prepares federal grants, be sure to include clauses required by your federal granting authority.

GRANT AGREEMENT

This agreement, entered into by and between _____ (hereinafter referred to as the "State") and _____ (hereinafter referred to as the "Grantee"), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

1. Purpose of Agreement

This clause is specifically for Grants. A grant differs from a contract in that a grant's funds are specifically appropriated for narrowly-defined purposes, and usually may only be awarded to defined 'qualified entities', are subject to ongoing administration by a specific state agency, and subject to repayment to the state if the terms of the Grant are not met by the Grantor. Remember that your Exhibit reference may be different than the one included here. THIS SHOULD BE THE FIRST CLAUSE OF THE GRANT.

The purpose of this agreement is to enable the State to make a grant from the State of Indiana's _____ Grant Fund of _____ Dollars and _____ Cents (\$XXX,XXX.XX) to the Grantee named above, for eligible costs of the project as described in Exhibits A and B of this agreement. The grant shall be used exclusively in accordance with the provisions contained in this agreement and in Indiana Code X-X-X establishing the _____ Grant Fund, as well as any rules adopted thereunder.

2. Term

Term should clearly state the duration of the agreement either by giving a specific beginning and ending date, (month, day and year) or a duration that begins after the date of the last State signatory. As a matter of policy we will retain the 4-year limit, but are willing to discuss longer terms on a case by case basis. THIS SHOULD BE THE THIRD CLAUSE OF THE GRANT.

This grant shall be effective for a period of _____. It shall commence on _____ and shall remain in effect through _____.

3. Design and Implementation of Project

This is specifically a clause for Grants. Remember that your Exhibit reference may be different than the one included here.

The Grantee shall be solely responsible for the proper design and implementation of the project as described in Exhibit A. Although not expressly attached to this agreement, the Grantee agrees to complete said project in accordance with the plans and specifications contained in its application. Modification of its application shall require prior written approval of the State.

4. Monitoring Report by the State

This is specifically a clause for Grants. Remember that your Exhibit reference may be different than the one included here. Customize the statements to meet your agency's needs.

The State will conduct an on-site monitoring review of the project. The Monitoring Report will document the following:

- A. Whether state, local and/or private funds allocated for the project were expended for activities consistent with the Grantee's grant application and Exhibit A of this agreement.
- B. A complete, detailed analysis of actual state, local and/or private funds expended to date on the project and conformity with the amounts for each budget line item as set forth in Exhibit B of this agreement.
- C. A detailed listing of all project costs by project budget line item which are accrued yet unpaid, if any.
- D. A written evaluation as to the Grantee's timely progress in project management, financial management and control systems, procurement systems and methods, and performance relative to timely submission of quarterly project reports.

5. Payment of Grant Funds by the State

This is specifically a clause for Grants. Remember that your Exhibit reference may be different than the one included here. Customize the statements to meet your agency's needs.

The payment of this Grant by the State to the Grantee shall be made in accordance with the following schedule and conditions:

- A. This Grant must be fully executed.
- B. All the evidentiary materials required by Exhibit C attached hereto and incorporated herein must be submitted to and approved by the State.
- C. Any other grant conditions as specified in Exhibit C must be met to the State's satisfaction.
- D. The State may require evidence furnished by the Grantee that substantial progress has been made toward completion of the project, as described in Exhibit A, prior to making the first payment under this Grant. All payments are subject to the State's determination that the Grantee's performance to date conforms with the project as approved and described in Exhibit A, notwithstanding any other provision of this Agreement.

- E. Unless authorized by statute and previously agreed, all payments will be made in arrears only upon presentation of approved and signed State of Indiana Claim Vouchers. Such Claim Vouchers must be submitted with the budget expenditure report detailing disbursements of state, local and/or private funds by project budget line items as set forth in Exhibit B.
- F. The Grantee is responsible for submitting to the State on a calendar quarterly basis, a quarterly progress report until the completion of the project. These reports must detail progress made toward the completion of the project described in Exhibit A.
- G. If the Grant is terminated by either party prior to the Expiration Date set forth in Paragraph ____ of this Grant, pursuant to Paragraph ____ of the Grant, the State will promptly conduct an on-site monitoring of the project and complete a project monitoring report as described in Paragraph ____ of this Grant.
- H. Failure to complete the project and expend state, local and/or private funds in accordance with this agreement may be considered a material breach of the agreement and shall entitle the State to impose sanctions against the Grantee including, but not limited to, suspension of all grant payments, and/or suspension of the Grantee's participation in State grant programs until such time as all material breaches are cured to the State's satisfaction. Sanctions may also include repayment of all state funds expended for activities, which are not in the scope of this project as set forth in Exhibits A, and B of this grant.

6. RECORDS, REPORTS, INSPECTIONS AND AUDITS

Following the expiration of this Contract, Contractor shall arrange for a financial and compliance audit of funds provided by State pursuant to this Contract. Such audit is to be conducted by an independent public or certified public accountant (or as applicable, the State Board of Accounts), and performed in accordance with Indiana State Board of Accounts publication entitled "Guidelines for Financial Examination of Entities Receiving Assistance from Governmental Sources," and applicable provisions of the Office of Management and Budget Circulars A-133 (Audits of Institutions of Higher Education and Other Non-Profit Organizations). Contractor is responsible for ensuring that the audit and any management letters are completed and forwarded to the "State" in accordance with the terms of this Contract. Audits conducted pursuant to this paragraph must be submitted no later than six (6) months following the close of the Contractor's fiscal year. Contractor agrees to provide the Indiana State Board of Accounts and the "State", an original of all financial and compliance audits. The audit shall be an audit of the actual entity, or distinct portion thereof that is the Contractor, and not of a parent, member, or subsidiary corporation of the Contractor, except to the extent such an expanded audit may be determined by the Auditor or the State to be in the best interests of the State. The audit shall include a statement from the Auditor that the Auditor has reviewed this Contract and that the Contractor is not out of compliance with the financial aspects of this Contract.

7. Project Budget and Budget Modification

This is specifically a clause for Grants. Remember that your Exhibit reference may be different than the one included here.

The project budget is set forth as Exhibit B of this Grant, attached hereto, made a part hereof and incorporated herein by reference as part of this Grant. The Grantee shall not spend more than the amount for each line item, as described in Exhibit B, without the prior written consent of a duly authorized representative of the State, nor shall the project costs funded by the grant and those funded by the local and/or private share be amended without the prior written consent of the State.

8. Statutory Authority of Grantee

This clause is specifically for Grants.

If the Grantee in this Grant is a qualified entity under Indiana Code X-X, it expressly warrants to the State that it is statutorily eligible to receive monies from the _____ fund, and it expressly agrees to repay all monies paid to it under this Grant, should a legal determination of its ineligibility be made by any court of competent jurisdiction.

9. Use of Grant Funds by Grantee

This clause is specifically for Grants, designating the purpose of the "gift". Remember that your Exhibit reference may be different than the one included here.

Grant funds received by the Grantee pursuant to this Grant shall be used only to institute an approved _____ permitted by Indiana Code X-X-X, which project is described fully in Exhibit A, attached hereto, made a part hereof and incorporated herein by reference as part of this Grant.

10. Conflict of Interest

You MUST have this clause. If you are using federal dollars and federal language is required, we will accept it in place of the following language.

A. As used in this section:

"Immediate family" means the spouse and the unemancipated children of an individual.

"Interested party," means:

1. The individual executing this Grant;
2. An individual who has an interest of three percent (3%) or more of Grantee, if Grantee is not an individual; or
3. Any member of the immediate family of an individual specified under subdivision 1 or 2.

“Department” means the Indiana Department of Administration.

“Commission” means the State Ethics Commission.

- B. The Department may cancel this Grant without recourse by Grantee if any interested party is an employee of the State of Indiana.
- C. The Department will not exercise its right of cancellation under section B above if the Grantee gives the Department an opinion by the Commission indicating that the existence of this contract and the employment by the State of Indiana of the interested party does not violate any statute or code relating to ethical conduct of state employees. The Department may take action, including cancellation of this Grant consistent with an opinion of the Commission obtained under this section.
- D. Grantee has an affirmative obligation under this Grant to disclose to the Department when an interested party is or becomes an employee of the State of Indiana. The obligation under this section extends only to those facts that Grantee knows or reasonably could know.

11. Drug-Free Workplace Certification

You MUST have this clause. Earlier versions of the Contract Manual referred to a separate certification agreement. We have incorporated the language from the old certification agreement into the language of this clause. This clause replaces any previous Drug-Free language.

The Grantee hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. Grantee will give written notice to the State within ten (10) days after receiving actual notice that the Grantee, or an employee of the Grantee has been convicted of a criminal drug violation occurring in Grantee’s workplace.

False certification or violation of the certification may result in sanctions including, but not limited to, suspension of grant payments, termination of the Grant and/or debarment of grant opportunities with the State of Indiana for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total Grant amount set forth in this Agreement is in excess of \$25,000.00, Grantee hereby further agrees that this Grant is expressly subject to the terms, conditions and representations of the following Certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. Pursuant to its delegated authority, the Indiana Department of Administration is requiring the inclusion of this certification in all Grants with and grants from the State of Indiana in excess of \$25,000.00. No award of a grant shall be made, and no grant, purchase order or agreement, the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been fully executed by

the Grantee and made a part of the Grant or agreement as part of the Grant documents.

The Grantee certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying their employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Grantee's workplace and specifying the actions that will be taken against employees for violations of such prohibition; and
- B. Establishing a drug-free awareness program to inform their employees of (1) the dangers of drug abuse in the workplace; (2) the Grantee's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace.
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment the employee will (1) abide by the terms of the statement; and (2) notify the Grantee of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying in writing the State within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;
- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) take appropriate personnel action against the employee, up to and including termination; or (2) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency; and
- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

12. Funding Cancellation

You **MUST** have this clause. Even in instances where no dollars are being expended, this is important.

When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of a grant, the grant shall be canceled. A determination by the Budget Director that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

13. Nondiscrimination

You **MUST** have this clause. Please see the following section for Grants using federal funding.

Pursuant to IC 22-9-1-10 and the Civil Rights Act of 1964, Grantee and its Sub-Grantees shall not discriminate against any employee or applicant for employment in the performance of this Grant. The Grantee shall not discriminate with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry. Breach of this covenant may be regarded as a material breach of contract. Acceptance of this Grant also signifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.

If federal funding is involved with the Grant, you must include the following stipulated language.

The Grantee understands that the State is a recipient of federal funds. Pursuant to that understanding, the Grantee and its subcontractors, if any, agree that if the Grantee employs fifty (50) or more employees and does at least \$50,000.00 worth of business with the State and is not exempt, the Grantee will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. The Grantee shall comply with Section 202 or Executive Order 11246, as amended, 41 CFR 60-250, and 41 CFR 60-741, as amended, which are incorporated herein by specific reference. Breach of this covenant may be regarded as a material breach of contract.

14. Order of Precedence

This clause must be included if you make reference to a grant application to clarify the duties/expectations of the Grantee. This clause can be extremely important when a problem arises. Word the clause accordingly. If you include this clause in your Grant, PLEASE fill in the information appropriately.

Any inconsistency or ambiguity in this Grant shall be resolved by giving precedence in the following order: (1) Grant, (2) Invitation to apply for Grant, (3) Grant Application, (4) attachments prepared by the State, and (5) attachments prepared by the Grantee.

15. Renewal

If there is the potential that your agency will want to renew the Grant, this clause is **REQUIRED**. As a matter of policy we will retain the four (4)-year limit on renewals, but are willing to discuss longer terms on a case-by-case basis. Inclusion of this clause in grants does not obligate the state to renew; however, its inclusion may save administrative costs should your agency decide that another year with the Grantee is warranted.

This Grant may be renewed under the same terms and conditions subject to the approval of the Commissioner of the Department of Administration and the State Budget Director in compliance with IC 5-22-17-4. The term of the renewed Grant may not be longer than the term of the original Grant.

16. Termination for Convenience

This Contract may be terminated, in whole or in part, by the State whenever, for any reason, the State determines that such termination is in the best interest of the State. Termination of services shall be effected by delivery to the Contractor of a Termination Notice, specifying the extent to which performance of services under such termination becomes effective. The Contractor shall be compensated for services properly rendered prior to the effective date of termination. The State will not be liable for services performed after the effective date of termination. The Contractor shall be compensated for services herein provided but in no case shall total payment made to the Contractor exceed the original contract price or shall any price increase be allowed on individual line items if canceled only in part prior to the original termination date.

17. State Boilerplate Affirmation Clause

I swear or affirm under the penalties of perjury that I have not altered, modified or changed the State's Boilerplate contract clauses in any way except for the following paragraphs:

18. Non-Collusion and Acceptance

You MUST have this clause in your Grant. THIS IS THE FINAL CLAUSE BEFORE THE SIGNATURE PAGE.

The undersigned attests, subject to the penalties for perjury, that he/she is the contracting party, or that he/she is the representative, agent, member or officer of the contracting party, that he/she has not, nor has any other member, employee, representative, agent or officer of the contracting party, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid any sum of money or other consideration for the execution of this agreement other than that which appears upon the face of the agreement.

If there is substantial space between the last clause and the bottom of the page (before the signature page), you should include this statement in very visible form.

The rest of this page is left blank intentionally.

In Witness Whereof, Grantee and the State of Indiana have, through duly authorized representatives, entered into this agreement. The parties having read and understand the foregoing terms of the grant do by their respective signatures dated below hereby agree to the terms thereof.

Grantee: Insert Name of Grantee Here (Where Applicable)

By: _____
 Printed Name: _____
 Title: _____
 Date: _____

Attested By: _____

State of Indiana Agency:

By: _____
 Printed Name: _____
 Title: _____
 Date: _____

Department of Administration

 Charles R. Martindale
 Commissioner
 Date: _____

State Budget Agency

 Marilyn F. Schultz
 Director
 Date: _____

Office of the Attorney General

 Stephen Carter
 Attorney General
 Date: _____

EDS AND GRANT CHECK LIST

Before you send your Grant through the signature approval process, check your Grant against the following list. If all items are completed, your Grant should not encounter any problems during the approval process.

EDS Checklist

	Document properly titled.
	Agency EDS number is complete. Agency automated purchasing system (APS) number – LAST digit from fiscal year – the number assigned by the agency or division.
	Account number/account name from agency fiscal officer.
	Total amount of this EDS action = new contract total.
	New total amount for each fiscal year: when added together should = new contract total.
	FROM/TO: FULL dates so time can be calculated.
	Name of State Agency/Division/Subdivision. Initials are okay.
	Address: the address the grant should be returned to.
	Courier is generally the grant coordinator or the person responsible for tracking the progress of the grant. The contract writer should be the person responsible for the development of the grant. Individual requesting contract is generally the facility or division head (superintendent, director, etc.).
	Method of Source Selection Marked
	MUST have the Taxpayer Identification Number of the Grantee to enter the data into the system.
	Description of work: one to two sentences describing the scope of work.
	Items requested in box #35 and 36 MUST be provided.
	Approval of agency fiscal officer, verifying that funds are available.
	Dollars match throughout EDS, Grant and all attachments.
	Dates clearly stated (beginning/end) and match throughout EDS, Grant and all attachments are within the limits (4 years).
	If your grant is being placed in the signature cycle more than 30 days after the agreement has started, enter an explanation as to why in box #35.
	All names are consistent throughout the EDS, Grant and all attachments.
	EDS COMPLETE AND INCLUDED WITH GRANT AS FACE SHEET

Grant Checklist

	Grantee used for all clauses in place of Contractor
	Terms spelled out, consistent, do not conflict with federal or state law, etc.
	All contract documents are paginated and in order.
	Attachments/exhibits are attached following the signature page. All exhibits/attachments are labeled in accordance with the references made in the grant. No exhibits/attachments have been included that were not referenced within the grant.
	IDOA EITHER RECOMMENDS OR REQUIRES THESE BOILER PLATE CLAUSES
	Conflict of Interest Statement MUST HAVE
	Drug-free workplace Certification MUST HAVE
	Funding Cancellation MUST HAVE
	Non-Collusion Statement MUST HAVE
	Non-Discrimination Clause MUST HAVE
	Purpose of Agreement MUST HAVE
	Design and Implementation of Project VERY IMPORTANT
	Monitoring Report by the State VERY IMPORTANT
	Payment of Grant Funds by the State VERY IMPORTANT
	Project Budget and Budget Modification VERY IMPORTANT
	Statutory Authority of Grantee VERY IMPORTANT
	Use of Funds by Grantee VERY IMPORTANT
	Force Majeure; Suspension and Termination of Contract IMPORTANT
	Governing Laws IMPORTANT
	Indemnity (Hold-Harmless Clause) (State does not hold other party harmless) IMPORTANT
	Notice IMPORTANT
	Progress Reports / Access to Records VERY USEFUL
	Renewal Option (no more than 4 years) VERY USEFUL
	SIGNATURE PAGE: Grantee and State Agency
	SIGNATURE PAGE: Charles R. Martindale, Commissioner, Indiana Department of Administration
	SIGNATURE PAGE: Marilyn F. Schultz, Director, State Budget Agency
	SIGNATURE PAGE: Stephen Carter, Attorney General of Indiana
	GRANT COMPLETE WITH ALL NEEDED SIGNATURES

Amendment
Development

Amendment Development

Amendment Boilerplate

Reminders:

The amendment Boilerplate should be used when you wish to alter the terms and/or conditions of an original contract/grant. If your agency wishes to modify the terms of the original contract/grant and renew the contract/grant for an additional term, both of these things can be done within an amendment. Be sure to consecutively number your amendments.

1. Please include an Executive Document Summary as the face sheet of your Amendment.
2. Amendments MUST be numbered.
3. The original contract/grant being modified, and any amendment(s) previously executed, MUST be attached to the amendment document.
4. Please provide a justification as to why the original contract/grant must be amended, for example, why was the additional work being requested not in the original contract/grant? Is the work covered under the amendment in line with the work described in the original contract/grant?
5. If you are amending the dollar amount of the original contract/grant, please explain the need for the increase/decrease and any deviation from the original rate of compensation.
6. The amendment signature page must duplicate the signature page of the original contract/grant.

Amendment # _____

This is an amendment to the contract/grant entered into by and between _____ (hereinafter referred to as "State") and _____ (hereinafter referred to as "Contractor" / "Grantee") dated _____.

In consideration of the mutual undertakings and covenants hereinafter set forth, the parties agree as follows:

List all changes being made to the original contract/grant here.
--

If the amount of the original contract/grant is affected by the changes, the new consideration amount must be indicated.
--

Total amount of this action is \$_____. Total remuneration of this contract/grant is hereby increased/decreased to a new total not to exceed \$_____.

All other matters previously agreed to and set forth in the original agreement and not affected by this amendment shall remain in full force and effect.

You MUST have this clause in your Amendment. THIS IS THE FINAL CLAUSE BEFORE THE SIGNATURE PAGE.
--

Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that he/she is the contracting party, or that he/she is the representative, agent, member or officer of the contracting party, that he/she has not, nor has any other member, employee, representative, agent or officer of the firm, company, corporation or partnership represented by him/her, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid any sum of money or other consideration for the execution of this agreement other than that which appears upon the face of the agreement.

In Witness Whereof, Contractor/Grantee and the State of Indiana have, through duly authorized representatives, entered into this agreement. The parties having read and understand the foregoing terms of the contract/grant do by their respective signatures dated below hereby agree to the terms thereof.

Contractor/Grantee:

(Where Applicable)

By: _____
 Printed Name: _____
 Title: _____
 Date: _____

Attested By: _____

State of Indiana Agency:

By: _____
 Printed Name: _____
 Title: _____
 Date: _____

Information Technology Oversight Commission

By: _____
 Printed Name: _____
 Title: _____
 Date: _____

Department of Administration

 Charles R. Martindale
 Commissioner
 Date: _____

State Budget Agency

 Marilyn F. Schultz
 Director
 Date: _____

Office of the Attorney General

 Stephen Carter
 Attorney General
 Date: _____

EDS and Amendment Checklist

EDS Checklist

	Document properly titled.
	Agency EDS number is complete. Agency automated purchasing system (APS) number – Last digit from fiscal year – the number assigned by the agency or division.
	Total amount of this EDS action = this EDS action + contract/grant total from prior EDS.
	New total amount for each fiscal year: when added together should = new contract/grant total.
	FROM/TO: FULL dates provided so that time can be calculated.
	Name of State Agency/Division/Subdivision.
	Address: the address to which the contract should be returned.
	Courier is generally the contract coordinator or the person responsible for tracking the progress of the contract/grant. The contract writer should be the person responsible for the development of the contract/grant. The individual requesting the contract/grant is generally the facility or division head (superintendent, director, etc.)
	All names are consistent throughout the EDS, Amendment, and all attachments.
	Dollars are consistent throughout the EDS, Amendment and all attachments.
	Dates clearly stated.
	Provide explanation as to why changes to the original document were needed.
	Approval of agency fiscal officer, verifying that funds are available.
	MUST have a Minority Business Plan and or Waiver request attached to the amendment
	EDS COMPLETE AND INCLUDED WITH AMENDMENT AS FACE SHEET.

Amendment Checklist

	Amendment is numbered.
	All terms spelled out, consistent, do not conflict with federal law or state law, etc.
	Non-Collusion Statement. MUST HAVE
	Original and subsequent Amendments attached.
	All contract/grant documents are paginated and in order.
	Attachments/Exhibits are attached following the signature page. All exhibits/attachments are labeled in accordance with the references made in the Amendment. No exhibits/attachments have been included that were not referenced within the Amendment.
	Signatures replicate the Signature Page of the Original Contract/Grant.

Renewal
Development

Renewal Development

Renewal Boilerplate

Renewals should be used when your agency would like to continue the same terms and conditions of the original contract/grant for an additional term. Renewals can not contain any modification to the contract/grant.

Reminders:

1. An expired contract/grant cannot be renewed.
2. A contract/grant can not be renewed if there was not a renewal clause in the original contract/grant.
3. When you renew the contract/grant you are bringing all the original terms and conditions forward for another term (i.e. one additional year and \$10,000 more dollars).
4. Please include an Executive Document Summary as the face sheet of your Renewal.
5. Renewals must be numbered.
6. A renewal may allow for an increase in payment only if an increase has been provided for in the original contract/grant.
7. The original contract/grant being renewed **MUST** be attached to the renewal document.
8. The renewal signature page does not require the approval of the Attorney General's Office or the Information Technology Oversight Commission.
9. If you only need more time on the contract/grant to complete work in process, you may want to consider an amendment to extend the term, only.
10. Two types of renewal language have been offered for your use. **ONLY USE ONE.**

11. We retain a four- (4) year limit on renewals, but are willing to discuss longer terms on a case by case basis.

Renewal # _____
(For Renewals that DO NOT allow for a price increase)

Pursuant to IC 5-22-17-4 and the terms of the contract/grant, _____ (hereinafter referred to as "State") exercises its option to renew its contract/grant with _____ (hereinafter referred to as "Contractor" / "Grantee") under the same terms and conditions of the original contract/grant dated _____. The entire contract/grant shall commence on _____ and shall terminate on _____.

The total amount of the renewal is the amount owing during the renewal period. The total remuneration of the contract/grant is the amount committed for the full life of the contract/grant.

Total amount of this renewal is \$ _____. Total remuneration of this contract/grant is not to exceed \$ _____.

Non-Collusion and Acceptance

You MUST have this clause in your renewal. THIS SHOULD BE THE FINAL CLAUSE BEFORE THE SIGNATURE PAGE. All Contracts, Grants, Amendments, Renewals, Addendums, etc. must include this clause.

The undersigned attests, subject to the penalties for perjury, that he/she is the contracting party, or that he/she is the representative, agent, member or officer of the contracting party, that he/she has not, nor has any other member, employee, representative, agent or officer of the firm, company, corporation or partnership represented by him/her, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid any sum of money or other consideration for the execution of this agreement other than that which appears upon the face of the agreement.

All other matters previously agreed to and set forth in the original agreement shall remain in full force and effect.

In Witness Whereof, Contractor/Grantee and the State of Indiana have, through duly authorized representatives, entered into this contract/grant. The parties having read and understand the foregoing terms of the contract/grant do by their respective signatures dated below hereby agree to the terms thereof.

Contractor/Grantee:

State of Indiana Agency:

(If the original contract/grant says that the Renewal is at the sole discretion of the state, then the Contractor's/Grantee's signature is not necessary.)

By: _____
Printed Name: _____
Title: _____
Date: _____

By: _____
Printed Name: _____
Title: _____
Date: _____

Department of Administration

State Budget Agency

Charles R. Martindale
Commissioner
Date: _____

Marilyn F. Schultz
Director
Date: _____

Renewal # _____
(For Renewals that DO allow for a price increase)

Pursuant to IC 5-22-17-4 and the terms of the contract/grantee, _____ (hereinafter referred to as "State") exercises its option to renew its contract/grant with _____ (hereinafter referred to as "Contractor" / "Grantee") under the same terms and conditions of the original contract/grant dated _____. The entire contract/grant shall commence on _____ and shall terminate on _____.

The total amount of the renewal is the amount owing during the renewal period. The total remuneration of the contract/grant is the amount committed for the full life of the contract/grant.

In accordance with the original contract/grant an increase of _____, shall be allowed during this renewal period.

Total amount of this renewal is \$ _____. Total remuneration of this contract/grant is not to exceed \$ _____.

Non-Collusion and Acceptance

You MUST have this clause in your contract. THIS SHOULD BE THE FINAL CLAUSE BEFORE THE SIGNATURE PAGE. All Contracts, Grants, Amendments, Renewals, Addendums, etc. must include this clause.

The undersigned attests, subject to the penalties for perjury, that he/she is the contracting party, or that he/she is the representative, agent, member or officer of the contracting party, that he/she has not, nor has any other member, employee, representative, agent or officer of the firm, company, corporation or partnership represented by him/her, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid any sum of money or other consideration for the execution of this agreement other than that which appears upon the face of the agreement.

All other matters previously agreed to and set forth in the original agreement shall remain in full force and effect.

In Witness Whereof, Contractor/Grantee and the State of Indiana have, through duly authorized representatives, entered into this contract/grant. The parties having read and understand the foregoing terms of the contract/grant do by their respective signatures dated below hereby agree to the terms thereof.

Contractor:

State of Indiana Agency:

(If the original Contract/Grant says that the Renewal is at the sole discretion of the state, then the Contractor's/Grantee's signature is not necessary.)

By: _____
Printed Name: _____
Title: _____
Date: _____

By: _____
Printed Name: _____
Title: _____
Date: _____

Department of Administration

State Budget Agency

Charles R. Martindale
Commissioner
Date: _____

Marilyn F. Schultz
Director
Date: _____

EDS AND RENEWAL CHECKLIST

EDS Checklist

	Document properly titled.
	Agency EDS number is complete. Agency automated purchasing system (APS) number – Last digit from fiscal year – the number assigned by the agency or division.
	Total amount of this EDS action = this EDS action + contract/grant total from prior EDS.
	New total amount for each fiscal year: when added together should = new contract/grant total.
	FROM / TO: FULL dates provided so that time can be calculated.
	Name of State Agency/Division/Subdivision.
	Address: the address to which the contract/grant should be returned.
	Courier is generally the contract/grant coordinator or the person responsible for tracking the progress of the contract/grant. The contract/grant writer should be the person responsible for the development of the contract/grant. The individual requesting the contract/grant is generally the facility or division head (superintendent, director, etc.)
	All names are consistent throughout the EDS, Renewal, and all attachments.
	Dollars are consistent throughout the EDS, Renewal and all attachments.
	Dates clearly stated.
	Approval of agency fiscal officer, verifying that funds are available.
	MUST have a Minority Business Plan and or Waiver request attached to the contract
	EDS COMPLETE AND INCLUDED WITH RENEWAL AS FACE SHEET

Renewal Checklist

	Renewal is Numbered
	If price increase included, it was provided for in original contract/grant.
	Original and subsequent modifications and renewals are attached.
	All contract/grant documents are paginated and in order.
	SIGNATURE PAGE: Obtain Signature of Contractor/Grantee (If Necessary) and Agency Representative.
	SIGNATURE PAGE: Charles R. Martindale, Commissioner, Indiana Department of Administration.
	SIGNATURE PAGE: Marilyn F. Schultz, Director, State Budget Agency.
	RENEWAL COMPLETE

Addendum
Development

Contract Addendum Development

Addendum Boilerplate

When a contractor insists on using his/her own standard contract agreement, you must prepare and attach an addendum. The addendum incorporates the State's standard contract provisions. **DO NOT SIGN THE CONTRACTOR'S AGREEMENT**; all parties must sign the State's Addendum Signature Page.

Reminders:

1. As with the Contract Boilerplate, certain clauses have been designated as **required** and must be included in every addendum. The balance of the clauses is presented for your use and you should include as many as necessary to meet your agency needs.
2. Due to the way this material is presented, the clauses are not necessarily in order, nor are they numbered. **PLEASE NUMBER YOUR CLAUSES**, either by Roman numeral (I, II) or by Arabic numeral (1, 2). You should also make sure that your references to other contract clauses and attachments are correct.
3. Please include a completed Executive Document Summary as the face sheet of your contract.
4. Do not include limitations on liability and/or language in your addendum that voids warranties for "fitness for a particular purpose" and merchantability.
5. Remove the instruction language from the clauses before inserting them in your contract.

ADDENDUM

This Addendum is entered into by and between _____
 ("the State") and the entity designated as "Contractor", below.

The purpose of this Addendum is to modify, delete, or amend certain terms and conditions set forth in the attached Form Contract prepared by Contractor (the "Form Contract"). This Addendum and the Form Contract are incorporated into each other and, when read together, shall constitute one integrated document. Any inconsistency, conflict, or ambiguity between this Addendum and the Form Contract shall be resolved by giving precedence and effect to this Addendum.

Contractor Name:

Contractor Address:

Title of Form Contract:

Attached Form Contract consists of _____ pages (with / without) terms on both sides.

Contract term begins on _____ and ends _____

Total consideration for term of the Contract is _____ (\$ _____)

1. By mutual agreement of the parties, the following terms and conditions are deleted from the Form Contract:

- A. Any provision requiring the State of Indiana to provide insurance
- B. Any provision requiring the State of Indiana to provide indemnity
- C. Any provision providing the contract to be construed in accordance with laws other than those of the State of Indiana
- D. Any provision providing that suit be brought in any state other than Indiana
- E. Any provision providing for resolution of contract disputes
- F. Any provision requiring the State of Indiana to pay any taxes
- G. Any provision requiring the State of Indiana to pay penalties, liquidated damages, interest or attorney's fees
- H. Any provision modifying the statute of limitations provided by Indiana statute.

- I. Any provision relating to the time within which a claim must be made or suit brought
- J. Any provision requiring payment of consideration in advance unless authorized by an exception listed in IC 4-13-2-20
- K. Any provision limiting disclosure of the contract in violation of the Access to Public Records Act, IC 5-14-3-3.5
- L. Any provision giving the Form Contract precedence over this Addendum

The following terms and conditions are incorporated into and made a part of the Form Contract:

1. Consideration:

The Contractor shall be paid at the rate of \$. Total remuneration under this contract shall not exceed \$.

2. Term

This Contract shall be effective for a period of months. It shall commence on or date of final State acceptance, whichever is later, and shall terminate on or months after date of final approval/installation, whichever is later.

3. Renewal Option

. This Contract may be renewed under the same terms and conditions subject to the approval of the Commissioner of the Department of Administration and the State Budget Director in compliance with IC 5-22-17-4. The term of the renewed contract may not be longer than the term of the original contract.

4. Access to Records

The Contractor and its subcontractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this Contract. They shall make such materials available at their respective offices at all reasonable times during the term of this Contract, and for three (3) years from the date of final payment under this Contract, for inspection by the State or its authorized designees. Copies of such records shall be furnished at no cost to the State if requested.

5. Assignment

The Contractor shall not assign or subcontract the whole or any part of this Contract without the State's prior written consent. The Contractor may assign its right to receive payments to such third parties as the Contractor may desire

without the prior written consent of the State, provided that Contractor gives written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Contract and shall not be made to more than one party.

6. Audits

Contractor acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with IC 5-11-1 and audit guidelines specified by the State.

7. Authority to Bind Contractor

Notwithstanding anything in the contract to the contrary, the signatory for the contractor represents that he/she has been duly authorized to execute contracts on behalf of the contractor designated above and has obtained all necessary or applicable approval from the home office of the contractor to make this, the attached contract and this addendum, fully binding upon the contractor when his/ her signature is affixed and is not subject to home office acceptance when accepted by the State of Indiana.

8. Changes in Work

In the event the State requires a major change in the scope, character or complexity of the work after the work has begun, adjustments in compensation to the Contractor shall be determined by the State in the exercise of its honest and reasonable judgment. The Contractor shall not commence any additional work or change the scope of the work until authorized in writing by the State. No claim for additional compensation shall be made in the absence of a prior written approval executed by all signatories hereto.

9. Compliance with Laws

The Contractor agrees to comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment of any state or federal statute or the promulgation of any rules or regulations thereunder after execution of this Contract shall be reviewed by the State and the Contractor to determine whether the provisions of this Contract require formal modification.

10. Confidentiality of Data, Property Rights in Products, and Copyright Prohibition

The Contractor agrees that all information, data, findings, recommendations, proposals, etc. by whatever name described and in whatever form secured,

developed, written or produced by the Contractor in furtherance of this Contract shall be the property of the State. The Contractor shall take such action as is necessary under law to preserve such property rights in and to the State while such property is within the control and/or custody of the Contractor. By this Contract, the Contractor specifically waives and/or releases to the State any cognizable property right of the Contractor to copyright, license, patent or otherwise use such information, data, findings, recommendations, proposals, etc.

11. Confidentiality of State Information

The Contractor understands and agrees that data, materials, and information disclosed to Contractor may contain confidential and protected data. Therefore, the Contractor promises and assures that data, material, and information gathered, based upon or disclosed to the Contractor pursuant to this Contract will not be disclosed to others or discussed with other parties without the prior written consent of the State.

12. Conflict of Interest

A. As used in this section:

“Immediate family” means the spouse and the unemancipated children of an individual.

“Interested party,” means:

1. The individual executing this Contract;
2. An individual who has an interest of three percent (3%) or more of Contractor, if Contractor is not an individual; or
3. Any member of the immediate family of an individual specified under subdivision 1 or 2.

“Department” means the Department of Administration.

“Commission” means the State Ethics Commission.

The Department may cancel this Contract without recourse by Contractor if any interested party is an employee of the State of Indiana.

C. The Department will not exercise its right of cancellation under section B, above, if the Contractor gives the Department an opinion by the Commission indicating that the existence of this Contract and the employment by the State of Indiana of the interested party does not violate any statute or code relating to ethical conduct of state employees. The Department may take action, including cancellation of this Contract, consistent with an opinion of the Commission obtained under this section.

D. Contractor has an affirmative obligation under this Contract to disclose to the Department when an interested party is or becomes an employee of

the State of Indiana. The obligation under this section extends only to those facts that Contractor knows or reasonably could know.

13. Continuity of Services

- A. The Contractor recognizes that the Services provided are vital to the State and must be continued without interruption and that, upon Contract expiration, a successor, either the State or another Contractor, may continue them. The Contractor agrees to:
 - 1. Furnish phase-in training, and
 - 2. Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.
- B. The Contractor shall, upon the State's written request:
 - 1. Furnish phase-in, phase-out services for up to sixty (60) days after this Contract expires, and
 - 2. Negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required.

The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the State's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this Contract are maintained at the required level of proficiency.

- C. The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the Services required by this Contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations).

14. Debarment and Suspension

Contractor certifies, by entering into this Contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State of Indiana. The term "principal", for purposes of this Contract, means an officer, director, owner, partner, key employee, or other person with primary

management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of Contractor.

15. Default by State

If the State, sixty (60) days after written notice, fails to correct or cure any breach of this Contract, then Contractor may cancel and terminate this Contract and collect all monies due up to and including the date of termination.

16. Disputes

Should any disputes arise with respect to this Contract, Contractor and the State agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.

The Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all its responsibilities under this Contract that are not affected by the dispute. Should the Contractor fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by the State or the Contractor as a result of such failure to proceed shall be borne by the Contractor, and the Contractor shall make no claim against the State for such costs. If the State and the Contractor cannot resolve a dispute within ten (10) working days following notification in writing by either party of the existence of a dispute, then the following procedure shall apply:

The parties agree to resolve such matters through submission of their dispute to the Commissioner of the Department of Administration. The Commissioner shall reduce a decision to writing and mail or otherwise furnish a copy thereof to the Contractor and the State within ten (10) working days after presentation of such dispute for action. The Commissioner's decision shall be final and conclusive unless either party mails or otherwise furnishes to the Commissioner, within ten (10) working days after receipt of the Commissioner's decision, a written appeal. Within ten (10) working days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. If no reconsideration is provided within ten (10) working days, the parties may mutually agree to submit the dispute to arbitration for a determination, or otherwise the dispute may be submitted to an Indiana court of competent jurisdiction.

The State may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the State to the Contractor of one or more invoices not in dispute in accordance with the terms of this Contract will not be cause for Contractor to terminate this Contract, and the Contractor may bring suit to collect these amounts without following the dispute resolution procedure contained herein.

17. Drug-Free Workplace Certification

The Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. Contractor will give written notice to the State within ten (10) days after receiving actual notice that the Contractor or an employee of the Contractor has been convicted of a criminal drug violation occurring in the Contractor's workplace.

False certification or violation of the certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Contract and/or debarment of contracting opportunities with the State of Indiana for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total contract amount set forth in this Contract is in excess of \$25,000.00, Contractor hereby further agrees that this Contract is expressly subject to the terms, conditions, and representations of the following certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. Pursuant to its delegated authority, INDOT is requiring the inclusion of this certification in all contracts with and grants from the State of Indiana in excess of \$25,000.00. No award of a contract shall be made, and no contract, purchase order or agreement, the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been fully executed by the Contractor and made a part of this Contract as part of the contract documents.

The Contractor certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
- B. Establishing a drug-free awareness program to inform employees of (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment the employee will (1) abide by the terms of the

statement; and (2) notify the Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;

- D. Notifying the State in writing within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;
- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) take appropriate personnel action against the employee, up to and including termination; or (2) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

18. Employment Option

If the State determines that it would be in its best interest to hire an employee of the Contractor, the Contractor will release the selected employee from any non-compete agreements that may be in effect. This release will be at no cost to the State or the employee.

19. Force Majeure

In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

20. Funding Cancellation

When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Contract, this Contract shall be canceled. A determination by the Budget Director that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

21. Governing Laws

This Contract shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.

22. Indemnification

Contractor agrees to indemnify, defend, and hold harmless the State and its agents, officials, and employees from all claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission of the Contractor and/or its subcontractors, if any. The State will not provide such indemnification to the Contractor.

23. Independent Contractor

Both parties hereto, in the performance of this Contract, shall act in an individual capacity and not as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume liability for any injury (including death) to any persons, or damage to any property arising out of the acts or omissions of the agents, employees or subcontractors of the other party.

The Contractor shall be responsible for providing all necessary unemployment and workers' compensation insurance for the Contractor's employees.

24. Information Technology Accessibility

The Contractor acknowledges and agrees that all hardware, software and services provided to or purchased by the State must be compatible with the principles and goals contained in the electronic and information technology accessibility standards adopted by the Architectural and Transportation Barriers Compliance Board under Section 508 of the Federal Rehabilitation Act of 1973 (29 U.S.C. 749d), as amended.

25. Key Person(s)

- A. If both parties have designated that certain individual(s) are essential to the services to be provided, the parties agree that should such individual leave Contractor's employment during the term of this Contract for whatever reason, the State shall have the right to terminate this Contract upon (30) days prior written notice.
- B. In the event that Contractor is an individual, that individual shall be considered a key person and, as such, essential to the Contract. Substitution of another person for Contractor shall not be permitted without express written permission from the State.
- C. Nothing in sections A or B, above, should be constructed to prevent Contractor from using the service of others to perform tasks ancillary to

those tasks which directly require the expertise of the key person. Examples of such ancillary tasks include secretarial, clerical, and common labor duties. Contractor shall, at all times, remain responsible for the performance of all necessary tasks, whether performed by a key person or others.

Key person to this Contract is _____.

26. Licensing Standards

The parties agree that Contractor and its employees and subcontractors will comply with all applicable licensing standards, certification standards, accrediting standards and any other laws or regulations governing services to be provided by the Contractor pursuant to this Contract. The State shall not be required to reimburse Contractor for any services performed when Contractor or its employees or subcontractors are not in compliance with such applicable standards, laws, or regulations. If licensure, certification or accreditation expires or is revoked, Contractor agrees to notify the State immediately thereof.

27. Nondiscrimination

Pursuant to IC 22-9-1-10 and the Civil Rights Act of 1964, Contractor and its subcontractors shall not discriminate against any employee or applicant for employment in the performance of this contract. The Contractor shall not discriminate with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry. Breach of this covenant may be regarded as a material breach of contract. Contractor's execution of this Contract also signifies Contractor's compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.

The Contractor understands that the State is a recipient of federal funds. Pursuant to that understanding, the Contractor and its subcontractor, if any, agree that if the Contractor employs fifty (50) or more employees and does at least \$50,000.00 worth of business with the State and is not exempt, the Contractor will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. The Contractor shall comply with Section 202 of Executive Order 11246, as amended, 41 CFR 60-250, and 41 CFR 60-741, as amended, which are incorporated herein by specific reference. Breach of this covenant may be regarded as a material breach of contract.

28. Notices

Whenever any notice, statement or other communication is to be sent to the State or to the Contractor, it shall be sent to the following addresses unless otherwise specifically advised:

Notice to the State shall be sent to:

Contact Name & Title

Agency Name

Specific Address

Notice to the Contractor shall be sent to:

Payment to the Contractor shall be sent to:

29. Order of Precedence

Any inconsistency or ambiguity in this Contract shall be resolved by giving precedence in the following order: (1) this Addendum; (2) the Form Contract; (3) attachments prepared by the State; (4) the State's Request for Proposal; (5) Contractor's response to the State's Request for Proposal; (6) attachments prepared by the Contractor.

30. Ownership of Documents and Materials

Unless otherwise specified in the Form Contract, all documents, records, programs, data, film, tape, articles, memoranda, and other materials developed under this Contract shall be considered "work for hire" and the Contractor transfers any ownership claim to the State of Indiana and all such materials will be the property of the State of Indiana. Use of these materials, other than related to contract performance by the Contractor, without the prior written consent of the State, is prohibited. During the performance of the services specified herein, the Contractor shall be responsible for any loss of or damage to these materials developed for or supplied by the State and used to develop or assist in the services provided herein while the materials are in the possession of the Contractor. Any loss or damage thereto shall be restored at the Contractor's expense. Full, immediate, and unrestricted access to the work product of the Contractor during the term of this Contract shall be available to the State.

31. Payments

All payment obligations shall be made in arrears in accordance with Indiana law and state fiscal policies and procedures.

32. Penalties/Interest/Attorney's Fees

The State will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest, or attorney's fees, except as required by Indiana law, in part, IC 5-17-5-1 et seq., IC 34-54-8-5, and IC 34-13-1-6.

Notwithstanding the provisions contained in IC 5-17-5, the parties stipulate and agree that any liability resulting from the State's failure to make prompt payment shall be based solely on the amount of funding originating from the State and shall not be based on funding from federal or other sources.

33. Qualification to do Business in Indiana

If Contractor is other than an individual, Contractor certifies that it is duly registered and qualified with the Secretary of State to transact business in Indiana.

34. Severability

The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provision of this Contract.

35. Substantial Performance

This Contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any modification thereof.

36. Successors and Assignees

The Contractor binds its successors, executors, administrators, and assignees to all covenants, terms and conditions of this Contract. Except as above set forth, the Contractor shall not assign, sublet or transfer interest in this Contract without the prior written consent of the State.

37. Taxes

The State is exempt from state, federal, and local taxes. The State will not be responsible for any taxes levied on the Contractor as a result of this Contract.

38. Termination for Convenience

This Contract may be terminated, in whole or in part, by the State whenever, for any reason, the State determines that such termination is in its best interest.

Termination shall be effected by delivery to the Contractor of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which termination of performance becomes effective. The Contractor shall be compensated for services properly rendered or supplies provided prior to the effective date of termination. The State will not be liable for services performed or supplies provided after the effective date of termination. In no case shall total payment made to Contractor exceed the original contract price or shall any price increase be allowed on individual line items if canceled only in part prior to the original termination date.

39. Termination for Default

- A. With the provision of thirty (30) days notice to the Contractor, the State may terminate this Contract in whole or in part, if the Contractor fails to:
 - 1. Correct or cure any breach of this Contract;
 - 2. Deliver the supplies or perform the services within the time specified in this Contract or any extension;
 - 3. Make progress so as to endanger performance of this contract; or
 - 4. Perform any of the other provisions of this Contract.
- B. If the State terminates this Contract in whole or in part, it may acquire, under the terms and in the manner the State considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.
- C. The State shall pay the contract price for completed supplies delivered and services accepted. The Contractor and the State shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the State determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.
- D. The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this Contract.

40. Travel

If otherwise permitted by this Contract, expenditures made by the Contractor for travel will be reimbursed by the State at its current rate and in accordance with the State's Travel Policies and Procedures specified in the current Financial

Management Circular (#97-1.1).

41. Waiver of Rights

No right conferred on either party under this Contract shall be deemed waived and no breach of this Contract excused, unless such waiver or excuse shall be in writing and signed by the party claimed to have waived such right.

42. Work Standards

The Contractor agrees to execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If the State becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this Contract, the State may request in writing the replacement of any or all such individuals, and Contractor shall grant such request.

43. Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that he/she is the Contractor, or that he/she is the representative, agent, member or officer of the Contractor, that he/she has not, nor has any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Contract other than that which appears upon the face of this Contract.

[The rest of this page is left blank intentionally]

In Witness Whereof, Contractor/Grantee and the State of Indiana have, through duly authorized representatives, entered into this agreement. The parties having read and understand the foregoing terms of the contract/grant do by their respective signatures dated below hereby agree to the terms thereof.

Contractor/Grantee:

(Where Applicable)

By: _____
Printed Name: _____
Title: _____
Date: _____

Attested By: _____

State of Indiana Agency:

By: _____
Printed Name: _____
Title: _____
Date: _____

**Information Technology Oversight
Commission**

By: _____
Printed Name: _____
Title: _____
Date: _____

Department of Administration

Charles R. Martindale
Commissioner
Date: _____

State Budget Agency

Marilyn F. Schultz
Director
Date: _____

Office of the Attorney General

Stephen Carter
Attorney General
Date: _____

NOTES:

